UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Alcoa Power Generating Inc.	Docket No.	TS04-261-000
Cross Sound Cable Company, LLC	Docket No.	TS04-255-000
Dauphin Island Gathering Partners	Docket No.	TS04-242-000
Distrigas of Massachusetts LLC	Docket Nos.	TS04-6-000, TS04-236-000
El Paso Corporation	Docket No.	TS04-267-000
Granite State Gas Transmission Co.	Docket No.	TS04-150-000
High Island Offshore System, LLC	Docket No.	TS04-262-000
Kinder Morgan Pipelines	Docket Nos.	TS04-249-000, TS04-271-000 and TS04-272-000
Lincoln Electric System	Docket No.	OA04-1-000
Midwestern Gas Transmission Co.	Docket No.	TS04-209-000
Northern Border Pipeline Company	Docket No.	TS04-208-000
National Fuel Gas Supply Corporation	Docket No.	TS04-248-000
NorthWestern Energy	Docket No.	TS04-3-000 and -001
Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation	Docket No.	TS04-252-000
Panther Interstate Pipeline Energy, LLC	Docket No.	TS04-184-000
Petal Gas Storage, L.L.C.	Docket No.	TS04-263-000
Questar Pipeline Company, and Overthrust Pipeline Company, and Questar Southern Trails Pipeline Company	Docket No.	TS04-231-000
PPL Electric Utilities	Docket No.	TS04-71-000
Saltville Gas Storage Company LLC	Docket No.	TS04-152-000
Shell Offshore Inc. and Shell Gulf of Mexico	Docket No.	TS04-273-000
Shell Gas Transmission, LLC	Docket No.	TS04-274-000
Southwest Gas Transmission Company	Docket No.	TS04-222-000
Texas Gas Transmission LLC	Docket No.	TS04-253-000
Viking Gas Transmission Co.	Docket No.	TS04-212-000
Williston Basin Interstate Pipeline Co.	Docket No.	TS04-260-000

ORDER ON REQUESTS FOR WAIVERS FROM THE STANDARDS OF CONDUCT

(Issued September 20, 2004)

1. On November 25, 2003, the Commission issued a Final Rule adopting Standards of Conduct for Transmission Providers (Order No. 2004 or Final Rule).[1] Under Order No. 2004, the Standards of Conduct govern the relationships between Transmission Providers and all of their Marketing and Energy Affiliates. Order No. 2004 states that Transmission Providers may request waivers or exemptions from all or some of the requirements of Part 358 for good cause. See 18 C.F.R. § 358.1(d)(2004).

2. In Order No. 2004-A, the Commission established the parameters for waivers, partial waivers, or exemptions. First, the Commission will grant exemptions only for good cause. See Order No. 2004-A at P29. Second, the Commission will review the merits of each exemption request to determine whether a Transmission Provider qualifies for a full or partial waiver of the Standards of Conduct. *Id.* At P 27. Third, small pipelines may qualify for a partial waiver based on the size of the company, the number of employees and level of interest in transportation on the pipeline, and, where appropriate, whether the pipeline has separated to the maximum extent practicable from its Marketing or Energy Affiliates.[2] *See* Order No. 2004-A at P 30. Fourth, the Commission has exempted from the definition of Transmission Provider independent storage companies that are not interconnected with the facilities of affiliated pipelines, cannot exercise market power, have no exclusive franchise, no captive ratepayers, no cost-of-service, no guaranteed rate of return, and no ability to cross-subsidize at-risk businesses with rate-payer contributions. *See* Order No. 2004-A at P 39. Finally, Order No. 2004 does not limit the time for filing requests for exemptions or waivers. *See* Order No. 2004-A at P 32.

3. Between December 9, 2003 and July 27, 2004, the above-captioned Transmission Providers filed requests for exemption, waiver and partial waiver or a petition for declaratory order (El Paso). Notices of the filings were published.

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[1] *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 107 FERC ¶ 61,032 (2004), *order on reh'g*, 108 FERC ¶ 61,118 (2004).

[2] These are the same criteria the Commission used in determining whether small pipelines qualified for partial exemptions from the requirements of Order No. 497. *See, e.g., Ringwood Gathering Company*, 55 FERC ¶ 61,300 (1991).

4. The Commission is granting and denying the requests for waiver and exemption as discussed herein.

Alcoa Power Generating Inc. (APGI) – Docket No. TS04-261-000

5. APGI is a wholly-owned subsidiary of Alcoa Inc. (Alcoa) and owns and/or operates 10 aluminum smelters and associated fabricating facilities that consume about 3,900 MW of electric power when operating at full capacity. Other Alcoa operating locations increase the total amount of electricity consumed to over 4,000 MW. The power supply for all of APGI's smelters is provided by APGI from its own resources, purchased or managed by APGI.

6. APGI also owns limited transmission facilities that connect its electric generation assets that were constructed to supply industrial power to Alcoa's smelting plants as well as interconnecting with nearby public utilities. APGI asserts that it uses its generation and transmission assets for limited purposes and is only incidentally in the electric transmission business. On March 31, 2004, APGI sought an exemption from the Standards of Conduct for the following three APGI divisions that own interstate transmission facilities – the Long Sault Division,[3] the Tapoco Division,[4] and the Yadkin

[3] The Long Sault Division owns and operates five 115 kV transmission lines in northern New York State that connect the Alcoa Massena Operations with its electric energy suppliers. Three of the lines, 7 miles in length, connect the Alcoa Massena Operations with the New York Power Authority at Barnhart Island. The other two lines, 7 miles in length, connect the Hydro-Quebec System with New York at the National Grid Dennison Substation in Massena (*a.k.a.*, the Cedars lines). Cedars Rapids Transmission Company, a wholly-owned subsidiary of Hydro-Quebec, leases the entire capacity of the Cedars lines.

[4] The Tapoco Division (Tapoco) owns and operates four hydroelectric plants near Alcoa, Tennessee. Tapoco also owns and operates a number of 161 kV transmission lines that primarily connect Tapoco's generating facilities to the Alcoa Tennessee Operations smelting plant. The Aloca-Tapoco transmission lines are connected on both ends to the Tennessee Valley Authority (TVA) transmission system. Of the total Tapoco transmission, over twenty miles are part of the interconnected transmission grid system with interconnections at the Alcoa plant substation and the Santeetlah substations. The Tapoco transmission path has 192 MW of total transmission capability (TTC) and between 0 MW to 32 MW of Available Transmission Capacity (ATC). TVA has a contract with APGI to use a portion of the Tapoco transmission path. According to AGPI, the Tapoco transmission path exists in parallel with network transmission paths provided by the TVA transmission system; Tapoco does not provide transmission service to third parties, other than its service to the TVA; and Tapoco has no transmission market

Division.[5] According to APGI, the Commission granted these three divisions a waiver of Order No. 889[6] and its requirements, including the Standards of Conduct.[7] According to APGI, it utilizes its generation and transmission assets for specific, limited purposes and is only incidentally in the electric transmission business. APGI notes that it also makes certain limited sales into the wholesale market.

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power in the region.

[5] The Yadkin Division (Yadkin) owns and operates four hydroelectric plants near Badin, North Carolina. Yadkin also owns and operates a number of 13.8 kV and 100 kV transmission lines that primarily connect Yadkin's generating facilities to the Alcoa Badin Works smelting plant. APGI indicates that currently the Badin Works Smelter is curtailed and most of the output of the Yadkin generation facilities is sold into the market. The transmission lines that connect the four hydroelectric plants are connected on both ends to the Duke transmission system. Of the total Yadkin transmission system, about sixteen miles are part of the interconnected transmission grid system with an interconnection to Duke and Progress Energy Carolinas, Inc. at the Badin substation and another interconnection with the Duke transmission system at the High Rock substation. The Yadkin transmission path is a single conductor 100 kV line that provides a limited transfer capability over and above the requirements of the Badin Works Smelter, and has 105 MW of TTC and between 5 MW to 100 MW of ATC. The Yadkin transmission path exists in parallel with network transmission paths provided by Duke over Duke's transmission system. According to APGI, Yadkin has no grandfathered transmission contracts and does not provide transmission service to third parties. APGI asserts that it is unable to utilize the Yadkin transmission assets to gain a competitive advantage on behalf of its merchant function or to discriminate against competitors in the bulk power market.

[6] *Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct*, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889-A, *order on reh'g*, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,049 (Mar. 4, 1997); Order No. 889-B, *reh'g denied*, 62 FR 64715 (Dec. 9, 1997), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,253 (Nov. 25, 1997).

[7] *See Soyland Power Cooperative, Inc., et al.*, 78 FERC ¶ 61,095 (1997). APGI notes that subsequently, in 1999, it agreed voluntarily to relinquish its waiver of Order No. 889 to facilitate Commission approval of its request for Section 203 authorization of the corporate reorganization that created APGI.

7. APGI requests the following partial waiver of the Standards of Conduct requirements in Part 358 of the Commission's regulations: (1) the separation of function requirements, (2) the posting of comprehensive organizational charts depicting APGI's separation of functions, (3) the limitation on transferring employees between functions, (4) the requirements on internal training and procedures to ensure the separation of functions (including designation of a chief compliance officer, and (5) the information access restrictions and prohibited disclosure requirements of sections 358.5(a) and (b).[8] In an answer to protests, discussed below, APGI modified its request for waiver of section 358.5(a) and (b) of the Commission's regulations.

8. APGI also requests the following partial waiver of the Order No. 889 Open Access Same-Time Information Systems (OASIS) requirements in section 37.6 of the Commission's regulations that requires the posting of: (1) real-time Total Transmission Capability (TTC) and calculations for each posted path; (2) real-time Available Transmission Capacity (ATC); (3) prices and a summary of the terms and conditions associated with all transmission products offered to transmission customers (other than by posting the Long Sault, Tapoco and Yadkin OATTs on its Internet website); (4) information on ancillary services offered by APGI under the *pro forma* tariff; (5) transmission service schedules; and (6) other communications related to transmission services.[9]

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[8] APGI notes that it will continue to comply with the following Standards of Conduct requirements including: (1) post the names and addresses of its sales and marketing units and energy affiliates on its Internet website; (2) post a description of its transmission facilities on its Internet website; (3) enforce all tariff provisions relating to the sale or purchase of open access transmission service, if these tariff provisions permit the use of discretion; (4) apply all tariff provisions relating to the sale or purchase of open access transmission service in a non-discriminatory manner, if these tariff provisions permit the use of discretion; (5) process all similar requests for transmission in the same manner within the same period of time; (6) APGI will not, through its tariff or otherwise, give preference to its own marketing or sales function or to any energy affiliate , over any other customer in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtail merits, scheduling, priority, ancillary services or balancing); and (7) post any offer of a discount for any transmission service by APGI on its Internet website contemporaneously with the time that the offer is contractually binding and for 60 days from the date of posting.

[9] APGI states that it is able to maintain an Internet website and comply with Order No. 889's OASIS posting requirements including posting and maintaining of the following on its Internet website: (1) an average Total Transmission Capability (TTC) (this will be a fixed number based on historic TTC); (2) an average Available Transmission Capacity (ATC) (this will be a fixed number based on historic usage of the

9. APGI contends that the cost of compliance with Order No. 2004's Standards of Conduct and with Order No. 889's OASIS system posting requirements outweighs any benefit and, in fact, would harm Alcoa's position in the worldwide aluminum market. APGI estimates that the annualized cost of full compliance ranges as high as approximately $1 million annually, with one-time, start-up costs of $850,000, and costs of $500,000 annually thereafter.

10. Finally, APGI requests the Commission to toll the effective dates of the requirements under section 358.4(e)(1) of the Standards of Conduct until the Commission issues a final order on its request for a waiver. In the alternative, if APGI's waiver request is denied, it requests the Commission to grant a minimum of 90 days from the issuance of the waiver order to comply with the Standards of Conduct requirements.

A. Interventions, Protests and Comments

11. Duke Power, a division of Duke Energy Corporation, and Carolina Power & Light Company (Carolina P&L) filed motions to intervene and protests.

12. According to Duke Power, APGI's request for partial waiver of Order Nos. 889 and 2004 for the Yadkin and Tapoco Divisions will impact Duke Power.[10] Duke Power points out that APGI has been selling the entire output from the Yadkin generating facilities into the wholesale market since the Alcoa smelters in Yadkin were closed in 2003.[11]

13. Duke Power argues that generally it does not oppose the requests for waiver of the OASIS requirements. However, if the Commission waives Order No. 889's requirement that Yadkin post information on requests and responses for transmission and ancillary

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relevant transmission capacity); (3) a telephone number to contact APGI for transmission service requests; (4) the Long Sault, Tapoco and Yadkin OATTs, including the currently effective transmission rates; and (5) a written log of transmission service requests.

[10] Duke Power points out that, while not mentioned in APGI's waiver request, not only does APGI have Commission-authorized market-based rate authority and make sales in the wholesale energy market, but Alcoa Power Marketing, Inc. (APMI), an affiliate of APGI, also has market-based rate authority.

[11] According to Duke Power, APGI (and/or APMI) sold in excess of 9 million MWhs of electricity with revenues of nearly $280 million in 2003. Of those sales, Duke Power estimates that at least 2.6 million MWhs were made to utilities in the Southeast region where the Yadkin and Tapoco facilities are located, with revenues in excess of $83 million.

services by APGI on Yadkin's OASIS Internet website, Duke Power requests that the Commission require Yadkin to provide copies of the transmission service agreements to Duke Power's transmission personnel, upon request. Duke Power also does not oppose APGI's request that Yadkin be excused from the requirement to post transmission service schedules on its OASIS Internet website, as long as it is not also seeking an exemption from the scheduling and tagging requirements to which all Transmission Providers must adhere.

14. Duke Power, on the other hand, opposes APGI's request that the Commission grant Yadkin and Tapoco Divisions waivers of the separation of functions and related requirements in Order No. 2004. Duke Power states that Yadkin is operating a control area (which includes the Tapoco generating facilities) subject to North America Electric Reliability Council (NERC) and Southeastern Electric Reliability Council (SERC) requirements and standards, and that Yadkin transmission personnel participate in SERC and Virginia and Carolina Reliability region (VACAR) transmission studies and related activities which provide these personnel with access to generation and transmission information that is made available to the transmission personnel of the other utility participants.

15. Duke Power points out that these other utility participants must adhere to and comply with the separation of functions requirements in Order No. 2004. Duke Power argues that APGI does not explain why APGI (or APMI) marketers and traders should have access to transmission information obtained by Yadkin and Tapoco transmission personnel – information that is not available to Duke Power's marketers and other marketers that compete for power sales in the Southeast.

16. Duke Power asserts that APGI's (and/or APMI's) sales are not incidental to Alcoa's aluminum manufacturing. Duke Power argues, further, that APGI's Yadkin and Tapoco Divisions are functionally indistinguishable from other transmission-owning utilities that operate in tandem with jurisdictional marketing affiliates (APGI and APMI). Duke Power also asserts that APGI cannot justify the waivers by pointing to compliance costs. Duke Power contends that the $500,000 per year cost of compliance must be benchmarked against the $280 million in sales revenues earned by APGI in 2003.

17. Finally, Duke Power requests that, if the Commission grants APGI's request for waiver of the Standards of Conduct, it should require that Yadkin and Tapoco transmission personnel not participate in regional transmission activities that gives them access to off-OASIS information not available to other transmission-owning entities that are fully subject to the Standards of Conduct.

18. Carolina P&L also asserts that APGI is a significant competitor in the Southeast wholesale market with 2.6 million Mhs of electricity sold in the Southeast in 2003. Carolina P&L also notes that since APGI participates in SERC and VACAR transmission

studies, it has access to other SERC and VACAR utilities' generation and transmission information. Carolina P&L points out that APGI's requested waiver of the Standards of Conduct would allow APGI to share this transmission information with its marketing and sales employees thus giving it a competitive advantage in selling power in the Southeast. Carolina P&L, therefore, requests that, if the Commission grants APGI's waiver, it should (1) require APGI to sell into the wholesale market at cost-based rates, (2) prohibit APGI from participating in or having access to SERC or VACAR transmission or generation data, and/or (3) require APGI to divest those transmission facilities that are part of the interstate transmission grid.

B. APGI's Answer

19. In response to Duke Power's and Carolina P&L's concern that exempting APGI from the separation of function requirements in section 358.5 of the Standards of Conduct would provide an unfair advantage to APGI's merchant functions, APGI states that, historically, in its compliance with Order No. 889, it has maintained separation of its merchant and transmission functions. APGI asserts that it intends to continue this separation of its merchant and transmission functions under the current Standards of Conduct. APGI clarifies that its waiver request with respect to the information disclosure requirements of section 358.5 is limited to sections 358.5(b)(3) and (b)(4). APGI will continue to comply with sections 358.5(a), (b)(1), (b)(2), and (b)(5) through (b)(8). According to APGI, this clarification should be sufficient to address Duke Power's and Carolina P&L's concerns without the requested additional conditions.

20. APGI also asserts that Duke Power and Carolina P&L incorrectly characterize its operational systems and the size and nature of APGI's trading business. APGI challenges Duke Power's assertion that the "Tapoco system electrically is part of the Yadkin control area." APGI states that both the Yadkin and Tapoco systems are interconnected with the Duke Power transmission system at points of interconnection that physically are miles apart from one another. APGI also states that the Tapoco system facilities operated as part of the TVA control area and not as part of the VACAR. APGI states, further, that power and energy from the Tapoco facility are not traded, but rather, are exchanged as part of a long-term contract with TVA. APGI concludes, therefore, that the Tapoco Division is not in competition with Duke Power's or Carolina P&L's generating interests in the VACAR region.

21. Finally, APGI argues that the figures used by Duke Power and Carolina P&L to support their allegation that APGI (and its affiliate APMI) markets a substantial amount of power in the Southeast region cannot be verified and are inaccurate. APGI asserts that, in 2003, only 1.2 million MWhs were generated at the Yadkin project, most of which was sold into the market. APGI notes further that the power sales figures in its Electric Quarterly Reports include revenues from the resale of power purchased to serve Alcoa's smelting operations in Indiana. According to APGI, it is inaccurate for Duke

Power and Carolina P&L to suggest that the size of its trading business and related revenues make the cost of compliance with the Commission's regulations insignificant.

C. Discussion

22. The Commission is denying the requests for waiver. APGI has been complying with the Standards of Conduct under Order No. 889 since 1999. The only reason APGI provides to justify its request for waiver is that compliance has become increasingly difficult in the face of intensive electricity costs pressures that have battered the domestic aluminum market. APGI is not precluded from submitting a more limited request for waiver that addresses Duke's concerns regarding regional transmission information.

Cross Sound Cable Company, LLC – TS04-255-000

23. On March 10, 2004, Cross-Sound Cable Company, LLC (CSC) filed a request for an exemption from the Standards of Conduct. CSC owns Cross Sound Cable, a 24-mile, 330 MW bi-directional HVDC transmission line that runs under the Long Island Sound between New Haven, Connecticut and Shoreham, New York. CSC states that Cross Sound Cable connects the transmission systems of New England and New York but does not form an integrated transmission grid. Transmission service over the Cross Sound Cable is provided under the terms and conditions of Schedule 18 of New England Power Pool's (NEPOOL) open access transmission tariff (OATT).[12] Through an open season process, CSC negotiated the sale of 100 percent of the transmission rights for 20 years to Long Island Lighting Company (LIPA), a non-affiliate.

24. CSC states that it does not have any employees. TransEnergie U.S. Ltd. (TEUS), CSC's parent company, employs the transmission function employees that manage CSC's operations. CSC states that these employees are not shared with any other CSC affiliate and that the affiliates all do business in other states.

25. CSC states that since it does not have a wholesale merchant function that engages in the sale of electricity, the previous Standards of Conduct did not apply to CSC. CSC states that it does not share transmission employees with its Energy Affiliates and therefore, would not have an occasion to share non-public transmission information. Moreover, since all of the transmission capacity is held by a non-affiliate, CSC does not have any information to share or any opportunity to benefit an Energy Affiliate. CSC also argues that since the Cross Sound Cable does not form an integrated transmission system, it would have qualified for a waiver prior to Order No. 2004, and

[12] *TransEnergie U.S., Ltd.,* 91 FERC 61,230 at 61,840 (2000) (requiring that service be provided under the OATT of the independent system operator (ISO) or regional transmission organization (RTO) that operates the facilities).

since Order No. 2004 grandfathered in the prior waivers, CSC should be granted one now.

A. Interventions, Protests or Comments

26. No motions to intervene or protests were filed.

B. Discussion

27. The Commission is granting CSC a waiver of the Standards of Conduct. Under *Black Creek Hydro*, the Commission granted waivers of Order No. 888[13] and Order No. 889 to utilities that own, operate, or control only limited and discrete transmission facilities (rather than an integrated transmission grid) until such time that the utility receives a written request for a specific transmission service.[14] Waivers of Order No. 889, and now Order No. 2004, can be granted upon request to: (1) a utility that owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) a small utility that owns, operates, or controls an integrated transmission grid unless it is a part of a tight power pool, or unwarranted by other circumstances.[15]

28. Since Cross Sound Cable is an intertie that connects the New England and New York markets, and is not an integrated transmission grid, a waiver is appropriate. Furthermore, CSC does not share employees with its affiliates or have economic incentives for information sharing or granting preferences to affiliates. For these reasons, we find good cause exists to grant CSC's request for waiver of Order No. 2004.

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[13] *Promoting Wholesale Competition Through Open Access Non-Discrimination Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,036 (Apr. 24, 1996) at 31,692; *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,048 (Mar. 4, 1997); *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997); *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom*., *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *cert. granted*, 69 U.S.L.W. 3574 (Nos. 00-568 (in part) and 00-809), *cert. denied* (No. 00-800) (U.S. Feb. 26, 2001).

[14] *See Black Creek Hydro, Inc., et al.* 77 FERC ¶ 61,232 (1996).

[15] *Id.*

Dauphin Island Gathering Partners (Dauphin Island) – TS04-242-000

29. On February 13, 2004, Dauphin Island filed a request for a partial exemption from the Standards of Conducts sections 358.4(a) (separation of functions), and 358.5(a) and (b) (information access and disclosure prohibitions) and requested that the owners be treated as a holding or parent company under section 358.3(d)(6)(iii). Dauphin Island is jointly owned by Duke Energy Field Services, LP (DEFS), El Paso Corporation (El Paso), and Dominion Exploration and Production, Inc. (Dominion). Dauphin Island states that the owners need to be able to share information in order to operate Dauphin Island and act as the liaison to that partner's parent corporation.

30. Dauphin Island is the FERC-jurisdictional portion of a single natural gas gathering system. Its affiliate, Dauphin Island Gathering System, LLC (DIGS), controls the non-jurisdictional gathering facilities.[16] Dauphin Island connects the off-shore gathering system to the Mobile Bay Processing Plant, which is owned by El Paso and DEFS. Dauphin Island states that its system is underutilized having 800,000 Mcf/d of capacity with only 100,000 Mcf/d under firm contracts. Its only shippers are those off-shore producers that use DIGS to transport their gas either to processing or for sale in the downstream markets.

31. Dauphin Island states that due to its small size and limited operations, it has no employees but currently shares 14 transmission function employees with DEFS, one of its joint owners. Dauphin Island states that these employees fall into two categories: regional administrators and transmission operators. The regional administrators oversee Dauphin Island's commercial service, develop markets, administer contracts, and market the gathering and processing services. Dauphin Island states there are currently five employees in this category who spend from 10 to 50 percent of their time on Dauphin Island transmission-related matters.

32. The transmission operators are responsible for Dauphin Island's nominations, scheduling, imbalance management and operate the gas control room. The gas control room also monitors DEFS' activities in Texas, Oklahoma, Louisiana and Kansas. Dauphin Island states there are currently nine employees in this category who spend between 5 to 50 percent of their time on Dauphin Island transmission related matters.

A. Public Notice, Interventions, and Protests

33. No interventions or protests were filed.

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[16] *See Dauphin Island Gathering System*, 79 FERC ¶ 61,391 (2997) *reh'g denied*, 93 FERC ¶ 61,198 (2000).

B. <u>Discussion</u>

34. As a preliminary matter, since DEFS, Dominion, and El Paso engage in commodity markets or transmission transactions they do not qualify as a holding or parent company under section 358.3(d)(6)(iii) and are, therefore, Energy Affiliates of Dauphin Island.

35. However, because of Dauphin Island's lack of staff, small size and limited operations, the Commission grants Dauphin Island's request for a partial waiver of the Standards of Conduct. Specifically, this waiver applies to the provisions of section 358.4(a) dealing with separation of functions and sections 358.3(a)(1) and (2) and (b) (1), (2) and (3) relating to information access and disclosure prohibitions with respect to the transmission employees shared with DEFS, and as necessary, to the representatives of the joint owners in managing Dauphin Island.

<u>Distrigas of Massachusetts LLC (Distrigas) – Docket Nos. TS04-6-000 and TS04-236-000</u>

36. On February 2 and 9, 2004, Distrigas filed a request for an exemption from the Standards of Conduct. Distrigas states that it owns and operates the Everett, Massachusetts liquefied natural gas (LNG) receiving, storage, and regasification terminal and that the facility is not open-access or otherwise available to third parties for terminalling service. Distrigas controls 100 percent of the capacity of the terminal subject to a single, third-party storage contract and provides firm and interruptible LNG liquid and vapor sales service pursuant to its FERC tariff under Part 157 of the Commission's regulations, 18 C.F.R. Part 157 (2004).

37. Distrigas is affiliated with Distrigas LLC, which supplies imported LNG to Distrigas, Mystic River Energy Corporation (Mystic), a marketing entity, that purchases and sells domestic natural gas, and to other entities involved in upstream and downstream LNG-related activities. It is also affiliated with Tractabel, Inc., Tractabel Energy Marketing, Inc. (TEMI) and other Tractabel affiliates involved in energy-related activities, including Tractabel Calypso Pipeline, LLC. Distrigas states that it has never provided access to its LNG terminal to Mystic, TEMI, or any other affiliated entity and was not previously subject to the Standards of Conduct under former Part 161 of the Commission's regulations.

38. Distrigas is subject to the Standards of Conduct under Order No. 2004 due to a grandfathered storage service Distrigas provides to a single customer, Boston Gas Company d/b/a KeySpan Energy NE (Boston Gas), under Subpart A of Part 157. Distrigas asserts that the service is specifically tailored to avoid hampering Distrigas's

terminal operations and its receipt of LNG cargoes.[17] Distrigas maintains that it is not privy to any material confidential information from Boston Gas, due to the short-term nature of the service and limited information Distrigas acquires as a result of the service. Distrigas states that, other than this single storage contract, it uses 100 percent of its terminal capacity to support its sales service. Therefore, Distrigas asserts that third-party storage service cannot be offered to other potential customers, and Distrigas is precluded from providing preferential access to its facility to any marketing or other energy affiliate. Distrigas states that it offers no third-party terminalling service or transportation services and it has no separate transmission function employees within the meaning of the separation of functions requirement. Distrigas states that it is fully regulated by the Commission but it does not have traditional rate protection and is wholly at risk for costs.

39. Therefore, Distrigas argues that the application of Standards of Conduct to Distrigas is unnecessary and would impair the operation of its LNG terminal and impede its LNG sales services to customers throughout New England. Distrigas contends that to reliably manage the terminal and serve its customers' requirements close coordination of the LNG supply, shipping, inventory management, operation and sales functions is needed. It states that ongoing communication between all of the personnel involved in these and related functions is essential to terminal operations and its bundled LNG service. In its February 2 and 9, 2004 filings, Distrigas states that if it is not granted an exemption, it would not renew the storage agreement with Boston Gas and would seek a limited exemption until the expiration of the Boston Gas storage contract on October 31, 2004.

A. Public Notice, Interventions, and Comments

40. Boston Gas filed a motion to intervene and comments. No other interventions, protests, or comments were filed. Boston Gas is a contract customer of Distrigas engaged primarily in the purchase and retail distribution of natural gas. Boston Gas supports Distrigas's request for exemption because of the short-term nature of the service and the limited information acquired by Distrigas from Boston Gas as a result of the service. Boston Gas states that it relies heavily on LNG to meet its peak demands because of the limitation of interstate pipeline capacity to eastern Massachusetts. Distrigas has notified Boston Gas that without an exemption it would not renew the storage agreement when it expires October 31, 2004.

[17] Distrigas asserts that the storage agreement requires Boston Gas to release to Distrigas sufficient storage volumes to accommodate delivery of LNG from Distrigas's suppliers.

B. Discussion

41. Mystic and TEMI are Energy Affiliates of Distrigas. Under Order No. 2004, an Energy Affiliate includes those who buy, sell, trade or administer natural gas or electric energy in U.S. markets.[18] Based on Distrigas's statement that it has never provided access to its LNG terminal to Mystic, TEMI or any other affiliated entity, the Commission is granting Distrigas a partial waiver of the Standards of Conduct. The Commission denies Distrigas's request for complete waiver of the Standards of Conduct. Distrigas does not explain why it is unable to comply with the requirement to implement its tariff in a non-discriminatory manner under section 358.5(c). Specifically, the Commission is waiving the obligation to comply with the independent functioning requirement of section 358.4 and is waiving the information disclosure prohibitions of section 358.5(a)(1) and (2) and (b)(1), (2) and (3). Distrigas must comply with the other applicable requirements of the Standards of Conduct. Distrigas shall implement the Standards of Conduct by September 22, 2004.

El Paso Corporation (El Paso) - Docket Number TS04-267-000

42. On June 9, 2004, El Paso filed a Petition for Declaratory Order asking the Commission to declare that following a planned merger involving El Paso, Enterprise Product Partners L.P. (Enterprise) and Enterprise Products GP LLC (Enterprise GP), neither Enterprise, Enterprise GP nor any subsidiaries or affiliates of either of those companies will be Energy Affiliates of El Paso or any of its regulated Transmission Providers under Order No. 2004.

43. El Paso states that it currently owns a 50 percent partnership interest in GulfTerra Energy Company L.L.C., the general partner of GulfTerra Energy Partners, L.P. (GulfTerra). El Paso further states that GulfTerra is a publicly traded master limited partnership that provides midstream services to customers across the southern United States as well as the Mid-Continent and Rocky Mountain regions. El Paso states that Enterprise is a publicly traded limited partnership that provides midstream energy services to producers and consumers of natural gas and natural gas liquids.

44. El Paso states that on December 13, 2003, El Paso, Gulf Terra and Enterprise executed definitive agreements to merge the operations of Enterprise and GulfTerra. Once the merger is complete, El Paso asserts that it will own approximately 3.9 percent of the publicly traded limited partnership units of Enterprise and an indirect 9.9 percent passive ownership interest in the Enterprise General Partners. For a three year period, El Paso states that it will have the right to make a one-time election to exchange (and thereby eliminate) all of its indirect 9.9 percent passive ownership interest in Enterprise

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[18] *See* section 358.3(d)(3).

for common units, cash or a combination of the two. General Partner GulfTerra would survive the merger as wholly-owned subsidiary of Enterprise. El Paso states that the proposed merger is expected to close during the second half of 2004.

45. El Paso requests a declaratory order that Enterprise is not an Energy Affiliate of El Paso because El Paso asserts that, while it will have an economic interest in Enterprise, it will not have any ability to control, directly or indirectly, the management or policies of Enterprise. El Paso contends that this arrangement does not fall within the definition of "control" in 18 C.F.R. § 358.3(c) (2004) so Enterprise should not be considered an Energy Affiliate of El Paso.

46. El Paso asserts that section 3.2 of its partnership agreement with Enterprise expressly provides that the ownership of partnership units does not grant control over the partnership. According to El Paso, section 3.2 of the partnership agreement states that "[n]o Limited Partner or Assignee, in its capacity as such, shall participate in the operation, management or control. . . of the Partnership's business, transact any business in the partnership's name or have the power to sign documents for or otherwise bind the partnership." El Paso further states that section 7.1(a) of the partnership agreement provides that "no Limited Partner or Assignee shall have any management power over the business and affairs of the partnership."

47. El Paso further asserts that it has the right to vote only on "extraordinary, non-operating events that fundamentally alter the structure of the Enterprise." El Paso Request at 5. For example, El Paso states that unitholders are allowed to vote on the disposition of all or substantially all of the Partnership's assets, certain amendments of the Partnership Agreement, an election to dissolve the Partnership, a merger or defined structural changes to the General Partner. El Paso contends that these items do not give rise to concerns about affiliate abuse. Moreover, El Paso argues that its 3.9 percent unitholder interest is "insufficient to control the outcome of the vote in either a positive of negative way." *Id.*

48. El Paso states that the partnership agreement allows it to veto actions by the General Partner if the General Partner intends to act in contravention of the agreement. In Appendix B to its filing, El Paso lists the instances in which it must assent to an action by the General Partner. The items deal with disposition of assets of the Partnership, mergers and securities issues. El Paso contends that it will have no power to affirmatively dictate or veto any actions that would: interfere with the independent functioning of the Enterprise General Partner, Enterprise or any Energy Affiliate as regards transmission services or other operations; give El Paso or any of its affiliates undue preferences; or give El Paso or any of its affiliates informational advantages.

49. El Paso asserts that it will have no management authority over Enterprise and that management authority will rest in the hands of a separate company over which El Paso

will have no control. El Paso contends that this situation is similar to those in *Iroquois Gas Transmission System L.P.*, 78 FERC ¶ 61,108 (1997) *(Iroquois)* and *Dominion Transmission Inc.*, 95 FERC ¶ 61,370 (2001) (*Dominion*).

50. El Paso contends that its 9.9 percent passive ownership interest in the Enterprise General Partner does not give it any authority to direct and manage its business decisions. El Paso asserts that the Enterprise General Partner Agreement contains both affirmative provisions that vest management control over Enterprise exclusively with the Enterprise General Partner's board and officers as well as negative provisions that state that a membership interest in the Enterprise General Partner does not grant management authority over Enterprise. El Paso states that section 6.01(a) of the Enterprise General Partner Agreement vests all management power over the business and affairs of the Enterprise General Partner exclusively with the Enterprise General Partner's Board of Directors and Officers. El Paso asserts that it does not and will not have representation on the Enterprise Board. In this regard, El Paso contends that this situation is similar to that found in *Dominion*. El Paso further states that the Board of Directors for Enterprise's General Partner is appointed by Dan Duncan LLC, an entity with which El Paso and its affiliates have no direct or indirect ownership interest and have no entitlement to acquire such an interest.

51. El Paso asserts that the Enterprise General Partner's Board of Directors is responsible for appointing all officers of the Enterprise General Partner, who will act as the managers of the company. El Paso further asserts that Enterprise's assets will be operated by employees of the Enterprise General Partner, none of whom will be employees of El Paso or any of its affiliates. El Paso also asserts that there will be no sharing of employees between El Paso and the Enterprise General Partner.

52. Finally, El Paso contends that even if it converts its 9.9 percent passive ownership interest into an ownership interest beyond the 10 percent threshold that creates a rebuttable presumption of control under 18 C.F.R. § 358.3(c) (2004), El Paso would still lack sufficient power to affirmatively dictate or veto any action under the Enterprise Partnership Agreement.

A. Public Notice, Interventions, and Protests

53. No interventions or protests were filed.

B. Discussion

54. The Commission will conditionally grant El Paso's Petition for Declaratory Order that Enterprise is not an Energy Affiliate of El Paso's. El Paso's filing indicates some of the traditional factors for granting the relief requested, most notably the lack of shared employees, directors and officers and the lack of control over day-to-day operations.

However, El Paso will be able to unilaterally affect partnership policy through its ability to veto certain actions. This meets the definition of "control" in section 358.3(c) because in such instances El Paso will have the authority to "direct or cause the direction of the management of a company". *See also, Iroquois*, 78 FERC at 61,379 (citing identical language in the former definition of control under the former section 161.2(b)); *Dominion*; 95 FERC at 62,400 (in both of these cases, the Commission found that some affiliates did not meet the definition of control, as cited by El Paso in its petition request, but also found that others did).

55. The Commission has not previously identified circumstances under which a transmission provider with some power "to direct or cause the direction of the management of a company" would, nonetheless, not be deemed to exercise "control" for the purposes of determining if the affiliate regulations apply. El Paso is, in essence, asking the Commission to do so here, by arguing that the circumstances in which it has veto power over the Enterprise General Partners' actions do not raise situations in which preferential treatment to an affiliate can occur.

56. The Commission will conditionally grant El Paso's request because it appears that El Paso will not be informed of, or control or direct any of Enterprise's Energy Affiliate activities. El Paso must inform the Commission, in a TS docket filing, if its passive ownership of Enterprise's General Partners rises above 9.9 percent or if El Paso exercises its vote as a unitholder or if any El Paso employees or affiliates become involved in the management or operations of Enterprise.

Granite State Gas Transmission, Inc. (Granite State) – Docket No. TS04-150-000

57. Granite State requests a partial exemption from the Standards of Conduct. Granite State is an interstate pipeline that is a wholly owned subsidiary of NiSource Inc. Granite State's facilities consist of 85 miles of 8, 10, and 12 inch pipeline and pipeline loops. Granite State has a capacity of approximately 150,000 Dth/day, but does not have any on-system storage or compression. Granite State serves two affiliated local distribution companies (LDCs), Bay State Gas Company ("Bay State") and Northern Utilities, Inc. ("Northern")[19] and four non-affiliated shippers. Granite State interconnects with Tennessee Gas Pipeline Company and the jointly owned facilities of Portland Natural Gas Transmission System, Inc. and Maritimes and Northeast Pipeline.

58. Eight employees of Energy Supply Services (ESS), a division of NiSource Corporate Services and one employee of Bay State jointly provide gas control,

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[19] Granite State explains that under the Order No. 2004 Standards of Conduct, Bay State and Northern are considered Energy Affiliates of Granite because they make off-system sales utilizing their capacity on other interstate pipelines.

monitoring of pressures and flows and nomination and scheduling functions for Granite State, Bay State and Northern. Granite also explains that because the pipeline is underutilized, all gas that is nominated flows. ESS also administers and manages Bay State's and Northern's gas supply and interstate natural gas transportation contracts. Granite State states that Bay State, Northern and Granite State have shared joint gas control and scheduling services for 25 years.[20]

59. Granite States states that another affiliate, Columbia Energy Group, is responsible for: facility and design planning, determination and posting of available capacity, management of Granite State's website, contract and tariff administration, billing requests for service and new interconnections, requests for discounted rates, and compliance with FERC requirements.

A. Public Notice, Interventions and Protests

60. No comments, protests or motions to intervene were filed.

B. Discussion

61. The Commission is denying Granite State's request, but believes that with additional information, procedures and modest restructuring that ESS may provide gas control and scheduling services for Granite State, Bay State and Northern.

62. To prevent undue preferences to the affiliated LDCs, it is important that Granite State not share transmission and third-party customer information with the employees who engage in Energy Affiliate activities. Although Granite State states that it will not give the affiliated LDCs advance information regarding Operational Flow Orders

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[20] Granite states that it previously provided a bundled service and in the post-Order No. 636 environment, the Commission approved exchange and agency agreements that essentially replicated the manner in which services were physically rendered prior to Order No. 636. *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 Fed. Reg. 13267 (April 16, 1992), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,939 (April 8, 1992), *reh'g granted and denied in part*, Order No. 636-A, 57 Fed. Reg. 36128 (August 12, 1992), FERC Stats. & Regs. , Regulations Preambles January 1991 – June 1996 ¶ 30,950 (August 3, 1992), *order on reh'g*, Order No. 636-B, 57 Fed. Reg. 57911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), *Notice of Denial of Rehearing* (January 8, 1992), 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part, United Dist. Companies v. FERC*, 88 F.3d 1105 (D.C. Cir. July 16, 1996).

(OFOs), the Commission's concerns are not limited to OFOs.[21] The Granite State/ESS employees have third-party customer information as well as information from interconnecting pipelines, which, if shared with those engaged in Energy Affiliate activities, would confer undue preferences on the affiliated LDCs.

63. The Commission is concerned that the ESS employees who perform gas supply functions for all the affiliates also perform transmission functions for Granite State and the affiliated LDCs. Granite State has not explained why such employees must perform the gas supply functions. Granite State has also failed to explain how it will restrict access to transmission or customer information in the gas control center from the employees engaged in gas supply functions or other Energy Affiliate activities. Finally, Granite State did not articulate the responsibilities of the Bay State employee in the gas control and scheduling functions.

64. Within 30 days of the date of this order, Granite State must submit a filing explaining why the employees who perform gas supply functions and transportation contracting functions for the two affiliated LDCs must perform gas control functions for Granite State, and explain how it will restrict access to transmission or customer information in the gas control center from employees engaged in gas supply functions or in contracting functions. Because the Commission is directing Granite State to submit a compliance filing, the Commission will not enforce the separation of functions requirement with respect to these employees or the information sharing prohibitions of the Standards of Conduct until 30 days after the Commission rules on Granite State's compliance filing. Granite State shall implement the remaining provisions of the Standards of Conduct by September 22, 2004.

High Island Offshore System, LLC (HIOS) – TS04-262-000

65. On July 27, 2004, HIOS filed a request for temporary limited waivers of compliance with certain requirements of the Standards of Conduct.[22] HIOS is owned by GulfTerra. El Paso has an indirect 50 percent ownership interest in the general partner of GulfTerra. In the July 27th filing, HIOS stated that El Paso, GulfTerra and Enterprise are in the process of merging the operations of Enterprise and GulfTerra. After the completion of the merger, neither El Paso nor any of El Paso's affiliates will be Energy Affiliates of HIOS. HIOS supplemented its filing on August 6, 2004, to state that on

[21] *See Order No. 2004-A* at P 63-65.

[22] Previously, on April 8, 2004, HIOS filed a request for an exemption from compliance with the separation of functions requirements of Order No. 2004, 18 C.F.R. §§ 358.4(a) and 358.5(a) and (b). On July 8, 2004 HIOS filed a notice of withdrawal of its request for partial exemption filed on April 8, 2004.

July 29, 2004, GulfTerra and Enterprise publicly announced that their unitholders had approved the merger.

66. In its request, HIOS states that additional time following the close of the merger will be necessary to address certain procedural requirements of the Standards of Conduct. HIOS requests that the Commission grant temporary limited waivers of the following regulations for a period of 45 days following the closing of the Enterprise/GulfTerra merger: posting and updating comprehensive organizational charts showing the information required by sections 358.4(b)(3)(i) through (iv); posting notices of employee transfers between a Transmission Provider and any Marketing or Energy Affiliates, section 358.4(c); posting written procedures for implementing the Standards of Conduct, section 358.4(e)(3); distributing written procedures to all Transmission Providers employees and employees of marketing and Energy Affiliates, section 358.4(e)(4); and training of Transmission Provider employees, section 358.4(e)(5). In its July 27th filing, HIOS also states that it will be in compliances with the other provisions of Order No. 2004 by September 1, 2004 in the event that the merger is not completed by then.

A. Public Notice, Interventions, and Protests

67. No motions to intervene or protests were filed.

B. Discussion

68. The Commission is granting HIOS a 30-day limited waiver after the close of the merger for the following requirements: sections 358.4(b)(3)(i) through (iv) (posting organizational charts); section 358.4(c) (posting employee transfers); section 358.4(e)(3) (posting procedures); section 358.4(e)(4) and (5) (distributing procedures and training employees). Although the Commission deferred the implementation date for compliance with the Standards of Conduct to September 22, 2004, in Order No. 2004-B, it does not appear that the merger has closed and HIOS will not be in compliance by September 22, 2004. Thirty days should be adequate to comply with these provisions and it is consistent with the period of time the Commission affords newly certificated pipelines.

Kinder Morgan Pipelines (KM Pipelines) - Docket Numbers TS04-249-000, TS04-271-000 and TS04-272-000

69. The KM Pipelines[23] have filed three requests for exemption from the Standards of Conduct and one request for extension of time. On February 19, 2004, the KM Pipelines requested a limited exemption so that affiliated Hinshaw and intrastate pipelines which are subject to state regulation and do not make any off-system sales will not be considered Energy Affiliates of the KM Pipelines under the Standards of Conduct (Docket Nos. TS04-249-000). The KM Pipelines filed a Supplement to this request on July 21, 2004. Also on July 21, 2004, the KM Pipelines filed a request for limited exemption from the Standards of Conduct so that their parent company, Kinder Morgan, Inc. (KMI) will be eligible for the parent company exemption of 18 C.F.R. § 358.3(d)(6)(iii) subject to the functional separation of unbundled retail gas sales personnel from the remainder of KMI's LDC operating unit. (Docket No. TS04-271). On July 21, 2004, the KM Pipelines also filed a request to permit classification of Rocky Mountain Natural Gas Company (Rocky Mountain), a wholly owned subsidiary of KMI, as an exempt LDC for purposes of Order No. 2004. (Docket No. TS04-272). Finally, on July 21, 2004, the KM Pipelines sought an extension of time to fully comply with Order No. 2004 lasting 90 days after the date that the Commission rules on the KM Pipelines' exemption requests.

Docket No. TS04-249-000

70. The KM Pipelines assert that, in addition to interstate pipeline assets located in the Midwest, Gulf and Rocky Mountain regions, the KM family of companies operates intrastate natural gas pipelines in Texas and Colorado, as well as local distribution facilities in Nebraska, Colorado, and Wyoming. Several of the assets used to provide local distribution service qualify for the Hinshaw exemption under section 1(c) of the NGA.[24]

71. The KM Pipelines state that all of Kinder Morgan's transmission pipeline assets, including Hinshaw, intrastate and interstate pipelines, share numerous functions, including corporate governance, strategic planning and engineering. The KM Pipelines assert that these functions are supported by shared personnel, facilities and computer systems.

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[23] Kinder Morgan's affiliated pipelines jointly filing these requests are Natural Gas Pipeline Company of America (Natural), Kinder Morgan Interstate Gas Transmission, LLC, Trailblazer Pipeline Company, Canyon Creek Compression Company, Horizon Pipeline Company, L.L.C. and TransColorado Gas Transmission Company.

[24] 15 U.S.C. § 717 (2000).

72. The KM Pipelines assert that they have not had any marketing affiliates, as the term was defined under the Commission's prior standards of conduct, since 2000 when the marketing affiliates for the KM pipelines were sold by KMI.

73. The KM Pipelines contend that compliance with Order No. 2004 will result in significant operational disruption, costly duplication of personnel and facilities, and the loss of efficiencies for Kinder Morgan's existing pipelines. While Kinder Morgan's interstate, intrastate and Hinshaw pipelines have different Presidents and different account representatives responsible for selling transportation and handling scheduling, nomination and invoicing procedures, they share gas control centers, engineers, capacity analysts, pipeline project management, supervisory control and data acquisition (SCADA) personnel and some management personnel. The interstate, intrastate and Hinshaw pipelines also share legal services, SCADA servers, capacity management and load forecasting systems, planning systems, engineering groups, field operations systems and regulatory and accounting support. In addition, the Kinder Morgan Pipelines states that some field personnel are shared and that during non-business hours certain nomination and scheduling tasks are performed by shared personnel.

74. To support their exemption request, the KM Pipelines argue that their affiliated Hinshaw and intrastate pipelines do not make off-system sales and do not otherwise engage in or compete for business outside of their traditional gas utility service areas. The KM Pipelines assert that the sales from these pipelines are limited to long established residential, commercial and industrial customers subject to state regulation, and thus are more analogous to LDCs which do not make off-system sales, which are exempt from the definition of Energy Affiliate under Order No. 2004. The KM Pipelines argue that any sharing of personnel, facilities and operating information with the intrastate and Hinshaw affiliates are to support their state-regulated, traditional on-system businesses, similar to electric Transmission Providers that engage in solely in bundled retail sales, which are also exempted from the definition of Energy Affiliate.

75. In its July 21, 2004 supplement to its exemption request, the KM Pipelines propose an alternative approach whereby the KM Pipelines would separate intrastate pipeline employees engaged in commodity purchases and sales or in the purchase of interstate pipeline capacity into a discrete unit, called a Commodity Unit, within the intrastate pipelines. The Commodity Unit would be treated as an Energy Affiliate of the KM Pipelines for the purposes of Order No. 2004. The Commodity Unit would include personnel responsible for intrastate commodity purchases and sales, for acquiring transmission capacity on interstate pipelines and personnel that perform risk management functions to support intrastate commodity purchases and sales. The Commodity Unit would not include personnel that account for purchase and sale transactions, schedule the transactions or administer contracts associated with the transactions, nor does it include personnel such as those in the scheduling group that buy or sell gas incidental to imbalance management responsibilities.

76. The KM Pipelines assert that its proposal is similar to the Commission's required functional separation of the transmission and wholesale merchant functions of electric utilities in Order No. 889 [25] and continued in Order No. 2004-A.[26] The KM Pipelines state that the Commodity Unit would be functionally separate from employees of the KM Pipelines and from shared operational employees between the intrastate and interstate pipelines. The KM Pipelines further state that they would implement safeguards to ensure that the Commodity Unit does not have access to non-public transmission information, such as computer security and keycard restrictions. The Commodity Unit would not have access to the KM Pipelines' control rooms. The KM Pipelines state that they will provide Standards of Conduct training to employees emphasizing the no-conduit rule. The Commodity Unit would report to the President of the Intrastate Pipelines, who, in turn, would report to the President of Natural Gas Pipelines, an officer of KMI, the parent company.

77. Under KM Pipelines' proposal, the KM Pipelines would continue to share transportation functions with its intrastate pipeline affiliates such as Gas Control, Storage Management and System Design, Engineering, Project Management, Operations and other groups that support the operation of the transmission system.

<u>Docket No. TS04-271-000</u>

78. In its exemption request in Docket No. TS04-271, the KM Pipelines request a limited exemption from Order No. 2004 so their parent company, KMI, will be eligible for the parent company exemption under 18 C.F.R. § 358.3(d)(6)(iii) subject to the functional separation of unbundled retail gas sales personnel from the remainder of KMI's LDC unit.

79. The KM Pipelines state that KMI owns and operates an LDC as an operating unit of KMI which makes retail gas sales in Colorado, Wyoming and Nebraska. Because KMI is the parent company of the KM Pipelines, the LDC operating unit would make KMI an Energy Affiliate under Order No. 2004. KMI states that the Energy Affiliate designation would prevent information flow from the KM Pipelines to KMI needed for corporate governance purposes. The Commission recently denied the KM Pipelines' request for KMI to qualify for the LDC exemption. [27]

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[25] *Supra* note 6.

[26] *Order No. 2004-A* at P 104.

[27] *Order No. 2004-B* at P 21. The Commission stated that it was concerned that an LDC which also acts as a competitive retail service provider in a state-approved retail access program could use preferential access to interstate transportation systems to

80. In response to this, the KM Pipelines propose to functionally separate the unit that makes unbundled retail sales within KMI. The KM Pipelines' proposal is similar to that described above in Docket No. TS04-249 regarding its intrastate pipeline company employees. Eight employees are responsible for unbundled retail sales to customers on the KMI distribution system under state-regulated retail access Choice Gas programs in Wyoming and Nebraska. The Choice Gas Sales Unit would be physically separated from other LDC functions and the KM Pipelines and would be barred from receiving any prohibited transmission information.

81. The KM Pipelines state that the Choice Gas Sales Unit would be subject to the supervision, for financial and corporate purposes, of the President of the LDC operating unit, who would not have day-to-day responsibilities for the Choice Gas function, is not a transmission function employee and is not an operating employee of the Choice Gas function of the LDC. The KM Pipelines further state that the Choice Gas Sales Unit employees would be located in separate offices from the other LDC employees and KM Pipelines employees. Four of the employees work out of field locations and are responsible for marketing to end use customers. The other four employees, who are responsible for purchasing gas supply, nominations and scheduling, would be located in KMI's Lakewood office on a separate floor from the LDC employees.

82. The KM Pipelines assert that KMI is in the process of segregating currently shared information databases for its LDC operations and the KM Pipelines and implementing password protections. The KM Pipelines assert that KMI would implement separate password protection to prevent access by the Choice Gas Sales Unit to information databases of the KM Pipelines and the non-Choice Gas LDC operating unit. The KM Pipelines further assert that the all senior management and support employees shared between the Choice Gas Sales Unit and the LDC would be subject to the no conduit rule and that KMI employees will be prohibited from communicating prohibited transmission information to the Choice Gas Sales Unit.

83. The KM Pipelines state that it would provide training to the Choice Gas Sales unit on both the no-conduit rule and the need to remedy any inadvertent violations of that rule by prompt posting of the information on the KM Pipelines' internet website. Finally, the KM Pipelines assert that it will incorporate the safeguards described above into their Order No, 2004 compliance plans.

<u>Docket No. TS04-272-000</u>

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frustrate other competitive merchants seeking to serve the same customers.

84. In Docket No. TS04-272-000, the KM Pipelines ask that Rocky Mountain, a wholly-owned subsidiary of KMI, be classified as an exempt LDC for the purposes of Order No. 2004. Rocky Mountain is included in the KM Pipelines' exemption request in Docket No. TS04-249, but they make this additional request in the event that its exemption request in that docket is denied. The KM Pipelines state that Rocky Mountain and KMI's LDC division (KMI Retail) are both regulated by the Colorado Public Utilities Commission (CPUC). The KM Pipelines assert that Rocky Mountain is a Hinshaw pipeline and has no employees. The KM Pipelines state that Rocky Mountain is managed and operated by KMI Retail employees.

85. The KM Pipelines state that Rocky Mountain functions as the gas supply arm for KMI Retail's LDC operations in Western Colorado and that the managers and employees who are responsible for buying gas supply for KMI Retail's LDC operations are the same managers and employees who buy the gas supply that Rocky Mountain then sells to KMI Retail for use by KMI Retail's Western Colorado customers. The KM Pipelines assert that Rocky Mountain does not buy or sell gas for any other customer purpose or for use by any other customers.

86. The KM Pipelines contend that Rocky Mountain purchases gas supply that is accessible to its pipeline system in Western Colorado and that all of the gas supply purchases are consumed solely by KMI Retail's traditional LDC customers located in Western Colorado. The KM Pipelines assert that the gas supply purchases by Rocky Mountain for KMI Retail are sold at cost to KMI Retail customers at tariff rates approved by the CPUC and that Colorado law does not allow for a margin or profit on the gas supply price.

87. The KM Pipelines contend that Rocky Mountain does not market gas or make unbundled or unregulated sales of gas. They further contend that the KMI Retail employees who buy gas supply from Rocky Mountain are not involved with the Choice Gas programs described in Docket No. TS04-271 because KMI Retail has not obtained authority from the CPUC to provide unbundled Choice Gas service in Colorado. The KM Pipelines assert that Rocky Mountain does not make off-system gas sales and does not hold interstate pipeline capacity except to the limited extent necessary from time-to-time to facilitate its acquisition of gas supply for the benefit of KMI Retail's end use customers in Western Colorado. The KM Pipelines further assert that Rocky Mountain does not engage in capacity release transactions, and that the cost of any interstate pipeline capacity held by Rocky Mountain is passed on to KMI Retail in the gas sales price, which is in turn passed on to end use customers at cost under Colorado law.

88. The KM Pipelines ask that Rocky Mountain be classified as an exempt LDC for Order No. 2004 purposes because its only Energy Affiliate activities are to supply gas to KMI Retail. The KM Pipelines state that they, KMI and Rocky Mountain will ensure

that none of their employees who receives non-public transmission information will act as a conduit to share such information with Energy Affiliates, including Choice Gas employees, and that all such employees will receive Standards of Conduct training, with particular emphasis on the no conduit rule.

89. The KM Pipelines assert that if its request is denied (as well as its exemption request in Docket No. TS04-271), Rocky Mountain and the KM Pipelines would have to create a costly and duplicative separate gas control center and that Rocky Mountain would have to hire its own employees. The KM Pipelines state that this solution is commercially unworkable because Rocky Mountain and the LDC function as one entity in planning and procuring gas supply for LDC's end use customers.

A. Public Notice, Interventions, and Protests

90. BP America Production Company, BP Energy Company and the PSEG Companies filed timely notices of intervention in Docket No.TS04-249. No interventions or protests were filed in Docket Nos. TS04-271-000 and TS04-272-000.

B. Discussion

91. The Commission agrees that the KM Pipelines' proposals for internally segregating employees who perform Energy Affiliate activities for the KM Pipelines' intrastate pipeline facilities, including Rocky Mountain, and for KMI should avoid preferential treatment, including the improper sharing of information. The Commission directs the KM Pipelines to submit a compliance filing within 30 days of this order explaining how they have taken the steps described in their pleadings to segregate employees who perform Energy Affiliate activities from intrastate pipeline and KMI employees who receive non-public transmission information from the KM Pipelines. The Commission will not enforce compliance of the independent functioning requirement of the Standards of Conduct with respect to the KM Pipelines' intrastate activities until 30 days after the Commission rules on KM Pipelines' compliance filing.

C. Extension of Time Request

92. In addition to its requests in the above dockets, on July 21, 2004, the KM Pipelines requested an extension of time of the deadline for full compliance with Order No. 2004 until 90 days after the Commission has completed action on its exemption requests. [28]

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[28] The KM Pipelines also asked for the 90 day extension to apply to the completion of the Commission's consideration of their rehearing request concerning Order No. 2004-A. That request is moot because the Commission has already completed consideration of the rehearing request in Order No. 2004-B.

The KM Pipelines state that the Commission's decisions on their requests may result in substantial changes to the operations of the KM Pipelines and their affiliates and that the KM Pipelines will need an extension of time to evaluate the impact of the Commission's decisions and to comply fully with Order No. 2004. The KM Pipelines state that they anticipate that such evaluation and full compliance can be accomplished within 90 days following completion of the Commission's actions on the pending requests.

93. The Commission will deny the KM Pipelines' request for a 90-day extension of time to comply with Order No. 2004. However, the Commission will grant the KM Pipelines an extension until 30 days from the date the Commission rules on KM Pipelines' compliance filing to complete the segregation of employees of its intrastate pipeline affiliates and KMI who perform Energy Affiliate Activities. In all other respects, KM shall comply with Order No. 2004 by September 22, 2004.

Lincoln Electric System (Lincoln) – Docket No. OA04-1-000

94. On December 3, 2003, Lincoln filed a request seeking waiver of the functional separation requirement of the Standards of Conduct, but is not requesting a waiver of reciprocity, posting or the non-discrimination provisions. Lincoln states that it is a small municipal utility consisting of an electric generation, transmission and distribution system that is owned by the city of Lincoln, Nebraska. Lincoln offers service through a non-jurisdictional OATT, based on the Commission's Pro Forma OATT, and its facilities are listed on its own OASIS as well as Mid-Continent Area Power Pool's (MAPP). Lincoln interconnects with Nebraska Public Power District and other non-jurisdictional entities in MAPP and meets most of its transmission requirements through pre-OATT grandfathered agreements. Lincoln states that contract path transmission users can go around Lincoln to avoid a pancaked rate, and since 1996, it has received only three third-party requests for service, all of which have been daily firm requests. Lincoln has received approval to join Midwest Independent Transmission System Operator (MISO), although it will not take service until it becomes contiguous with MISO.

95. Lincoln states that it meets the Commission's waiver standards for small utilities.[29] Lincoln states that its 2002 sales totaled 3,716,216 MWh, which places it within the Commission's definition of small utility. Lincoln also states that it is a member of MAPP, which the Commission has not considered a tight power pool, evidenced by the Commission's grant of waivers to other MAPP members.[30] Finally, Lincoln states that

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[29] Lincoln cites *Black Creek Hydro*, 77 FERC ¶ 61,232 at 61,943 (1996).

[30] Listing Sunflower Electric Power Corporation, Southern Minnesota Municipal Power Agency and Minnkota Power Cooperative as MAPP members granted waivers by the Commission. *Central Minnesota Municipal Power Agency, et al.* 79 FERC ¶ 61,260 (1997); *Easton Utilities Commission, et al.* 83 FERC ¶ 61,334 (1998); *Sunflower Electric*

there are no other factors that weigh against granting Lincoln this waiver. Lincoln states that implementing the functional separation requirement would be a logistical and financial burden and estimates that it would cost approximately $1.4 million annually to create a separate marketing department.

96. Lincoln states that even though it is a non-jurisdictional utility, it is seeking a waiver of the functional separation requirements pursuant to NERC's request for increased information sharing to increase reliability and MISO's proposed Energy Market Tariff, which provides that control area operators need to obtain waivers if not operating in accordance with the Commission's Standards of Conduct.

A. Interventions, Protests and Comments

97. No interventions, protests or comments were filed.

B. Discussion

98. In *Black Creek Hydro*, the Commission required Madison Gas and Electric Company (MG&E) to comply with the requirements of Order No. 888 but did not require MG&E to comply with the requirements of Order No. 889.[31] Similarly, Lincoln is requesting a partial waiver of only the functional independence requirement of the Standards of Conduct and has not requested a waiver of Order No. 888's reciprocity requirements.

99. In Black *Creek Hydro*, the Commission found that waivers are appropriate for small utilities that dispose of less than 4 million MWh annually, and are not members of tight power pools, unless there are other circumstances that indicate a waiver would not be appropriate. Lincoln is a small public utility, is not a member of a tight power pool, and there are no other circumstances to indicate that a waiver is not appropriate. Therefore, the Commission grants Lincoln's request for partial exemption from the Standards of Conduct and waives the independent functioning requirement under sections 358.2(a) and 358.4(a) of the Commission's regulations. Additionally the Commission waives the informational sharing provisions under sections 358.5(a)(1) and (2) and (b)(1), (2) and (3) to the extent necessary due to the shared employees. By September 22, 2004, Lincoln shall implement the remaining Standards of Conduct for which it has not received a waiver.

Power Corp., 87 FERC ¶ 61,263 (1999).

[31] *Black Creek Hydro.*

MidWestern Gas Transmission Company (MidWestern) -- Docket No. TS04-209-000

100. MidWestern is a natural gas company owned by Northern Border Intermediate Limited Partnership (NBP).[32] MidWestern does not make any commercial sales of gas but does make small operational purchases and sales of gas.[33] MidWestern does not have any of its own employees and is operated by Northern Plains Natural Gas Company (Northern Plains). In addition to MidWestern, Northern Plains also operates two other interstate pipelines, Viking Gas Transmission Company (Viking) and Northern Border Pipeline Company (Northern Border).

101. MidWestern is seeking an exemption to allow the Gas Control department of Northern Plains to continue providing certain operations monitoring services for an Energy Affiliate of MidWestern. Under the Standards of Conduct, Bear Paw Energy, LLC (Bear Paw) and Crestone Energy Ventures, LLC (Crestone) are Energy Affiliates. Both of these companies are owned by NBP, which as previously indicated also owns MidWestern. Bear Paw is a natural gas gathering, processing and fractionation operation and has gas gathering in the Wyoming. Crestone and its subsidiaries own approximately 300 miles of gathering facilities in Wyoming.[34] NBP, through Bear Paw and Crestone, owns interests in certain gas gathering facilities in Wyoming.

102. During normal business hours Bear Paw and Crestone monitor their own gathering facilities. After hours and on the weekends Northern Plains electronically monitors Bear Paw's and Crestone's gathering facilities. Northern Plains also monitors MidWestern, but on a 24 hour basis. This service costs Bear Paw and Crestone $170,000 annually which reduces the cost that MidWestern would have to pay. MidWestern claims that strict scrutiny has been employed to ensure that no information about MidWestern or its customers is accessible by Bear Paw or Crestone. MidWestern argues that allowing this limited exemption would ensure cost efficiency of the current system and that MidWestern's customers would benefit from lower costs.

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[32] NBP's general partners are: Northern Plains Natural Gas Company and Pan Border Gas Company, subsidiaries of Enron Corp., and Northwest Border Pipeline Company, a subsidiary of TransCanada PipeLines Limited, which is a subsidiary of TransCanada Corporation.

[33] This is done for the sole purpose of increasing or decreasing line pack levels to maintain the pipeline system's operational integrity.

[34] Http://www.northernborderpartners.com/nngg-_cev.htm (September 6, 2004).

A. Public Notice, Interventions, and Protests

103. No motions to intervene or protests were filed.

B. Discussion

104. In Order Nos. 2004-A at P 97 and 2004-B at P 29-32, the Commission clarified that gatherers and processors affiliated with interstate pipelines are not Energy Affiliates in certain circumstances. If a gatherer or processor merely provides a gathering or processing service and only purchases natural gas to supply operational needs, and does not engage in other Energy Affiliate-related activities, then it is not an Energy Affiliate. It appears from Midwestern's filing that Bear Paw and Crestone engage in gathering functions, but it is not clear whether they engage in other Energy Affiliate-related activities. Within 30 days of the date of this order, Midwestern shall explain whether Bear Paw and Crestone are Energy Affiliates, as that term is defined at section 358.3(d) of the Standards of Conduct. If Bear Paw and Crestone are Energy Affiliates, Midwestern must specifically articulate the roles and responsibilities of the shared monitoring personnel and describe the procedures it will implement to protect customers of Midwestern. Because the Commission is directing Midwestern to submit a compliance filing, the Commission will not enforce the separation of functions and information disclosure prohibitions with respect to these shared employees until 30 days after the day the Commission rules on Midwestern's compliance filing. Midwestern shall implement the remaining provisions of the Standards of Conduct by September 22, 2004.

National Fuel Gas Supply Corporation (National Fuel) - Docket Number TS04-248-000

105. On February 9, 2004, National Fuel filed a request for a waiver of compliance with the Standards of Conduct with regard to its LDC affiliate, National Fuel Gas Distribution Corporation (Distribution). National Fuel supplemented its filing on June 3, 2004.[35] National Fuel requests that the Commission grant a waiver for Distribution so long as Distribution does not make off-system sales of gas that is shipped on National Fuel's system, except as covered by several preexisting waivers granted by the Commission. Alternatively, National Fuel asks that the waiver be limited so that (1) the information access and disclosure would apply to the communication of OFOs and other critical notices by National Fuel to Distribution and (2) National Fuel would continue to be permitted to provide dispatch services for Distribution. On September 1, 2004,

[35] In its February 9 filing, National Fuel also asked for a waiver for its intrastate pipeline affiliate, Empire State Pipeline (Empire). However, in its June 3 Supplemental Filing, National Fuel withdrew its waiver request for Empire because it concluded that its concerns were met by the Commission's clarifications in Order No. 2004-A.

National Fuel filed a second supplemental petition for waiver in which it expands the scope of its alternative request for waiver in response to Order No. 2004-B. Finally, National Fuel requests that if its waiver request is denied, that the Commission grant an extension of time to comply with the separation of functions requirements.

106. National Fuel consists of 1,800 miles of jurisdictional transmission pipelines and 32 storage fields located within a 125-mile radius in Western New York and Western Pennsylvania. Distribution is an LDC serving 700,000 customers within this region. National Fuel states that Distribution's activities are regulated by state public utility commissions. National Fuel asserts that Distribution engages in off-system sales to optimize the utilization of its capacity on the interstate pipelines upstream of National Fuel's system. National Fuel states that approximately 90% of the gas consumed on Distribution's system is first transported through National Fuel's facilities and that Distribution is the largest shipper of National Fuel.

107. Citing several Commission orders, National Fuel asserts that Distribution had not previously been subject to the Standards of Conduct prior to Order No. 2004. [36] In its current waiver request, National Fuel raises the same argument that it raised in its request for rehearing of Order No. 2004-A, namely that affiliated LDCs that make off-system sales but do not transport on their affiliated Transmission Providers should not be considered Energy Affiliates. However, National Fuel further argues that if its request for rehearing on this issue is denied, good cause exists for a waiver of the Standards of Conduct for Distribution.

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[36] The Commission notes that some of the cases cited as "waivers" by National Fuel were actually clarification orders in which waiver requests were denied. *National Fuel Gas Supply Corporation*, 64 FERC ¶ 61,192 (1993) (Waiver request denied because Commission held that under the definition of 18 C.F.R. § 161.1 (1992), Distribution was not a "marketing affiliate" because it did not conduct any transactions with National Fuel); *National Fuel Gas Supply Corporation*, 68 FERC ¶ 61,210 (1994) (Commission granted a waiver to the extent that Distribution sold gas to a marketing affiliate of National Fuel at a certain "hub point", which would then be transported by the marketing affiliate on National Fuel's system after the sale by Distribution, and the marketing affiliate then sold the gas to a buyer that would ship the gas away from the hub points on an unaffiliated pipeline); *National Fuel Gas Supply Corporation*, 73 FERC ¶ 61,272 (1993) (Waiver request denied because reporting requirements would not apply if National Fuel was not aware that Distribution was involved in a transaction because the transaction was a result of an anonymous computerized trading system); and *National Fuel Gas Supply Corporation*, 80 FERC ¶ 61,211 (1997) (limited, one-time waiver granted to make certain sales of gas in storage in connection with a state retail unbundling initiative).

108. National Fuel contends that its transportation services for Distribution provides 96 percent of the no-notice service under its EFT (Enhanced Firm Transportation) rate schedule. National Fuel asserts that this arrangement enabled National Fuel to provide an aggregate system approach to allocate transportation and storage capacities on its web-like system, rather than assigning specific National Fuel facilities and storage fields to specific customers. National Fuel states that Distribution must communicate frequently with National Fuel personnel regarding nominated and scheduled quantities under Distribution's various service agreements. National Fuel asserts that it is critical for Distribution to communicate with National Fuel regarding nominations to resolve any operational problems that may arise. National Fuel states in daily discussions Distribution reviews its intended next day use of National Fuel capacity into the various geographic areas of Distribution's service territory and National Fuel provides feedback to Distribution regarding the operational impact of that intend use, and operational requirements that Distribution should consider in making its nominations.

109. National Fuel states that it is willing to hold similar discussions with its other EFT shippers if asked, but that no other EFT customer has a load large enough or receipt points numerous enough to need daily communication outside the formal nomination process. National Fuel asserts that it cannot recall a single instance in which it has ever required a non-affiliated EFT shipper to revise a nomination under the EFT rate schedule.

110. National Fuel states that Distribution's Gas Supply Administration Department (GSAD), is responsible for acquiring gas supply for Distribution and arranging transportation of that supply on upstream pipelines. National Fuel states that it is unclear whether the "crucial operating information" exception clarified in Order No. 2004-A would apply to communications between National Fuel's dispatchers and GSAD. National Fuel states that its dispatchers need the ability to tell GSAD where gas is needed for the system and in what quantities, to assist GSAD in formulating nominations for EFT service that National Fuel can accommodate. National Fuel concedes that "some or all" of these communications "may now be covered" by the "operational information" provision (section 358.5(b)(8)) of the "transaction specific provision" (section 358.5(b)(5)). However National Fuel states that a general waiver should be granted because if National Fuel's dispatchers are prohibited from engaging in interactive discussions with Distribution's GSAD personnel regarding conditions on National Fuel's facilities, or if the exception is limited to operational or transaction-specific information, it would adversely affect system reliability for the reasons stated above.

111. In making its alternative waiver request for dispatch operations (in the event the Commission denies its broader waiver request), National Fuel states that it is not clear whether the control of pressures and flows of gas on Distribution's facilities from a National Fuel facility by National Fuel employees, who charge some of their time to Distribution would violate the independent functioning requirement.

112. National Fuel states that under its present operations, if gas pressure at a particular location within Distribution's facilities needs to be increased, that is observed by National Fuel's dispatchers, who would then adjust the flows of gas on National Fuel's system. National Fuel further contends that this is a situation of the Transmission Provider controlling the facilities of an Energy Affiliate, not the reverse situation. National Fuel states that there is no advantage for Distribution from National Fuel's control of pressure on Distribution's facilities. National Fuel contends that if it does not receive even a limited waiver for dispatch operations, it would cost $600,000 to $1 million to separate the Distribution control center and approximately $1,300,000 per year in additional expenses to operate. National Fuel states that its alternative request for waiver, which would permit National Fuel to continue to provide dispatch services for Distribution, "would obviate the largest single out-of-pocket costs associated with National Fuel's compliance with Order No. 2004[,]" the costs of a functionally separate control center. [37]

113. National Fuel also disagrees with the Commission's rationale in Order No. 2004-A that an LDC that has shared employees with the transmission provider could have advance notice of an OFO. National Fuel contends that OFOs on its system are determined by field personnel and dispatchers, not Distribution's GSAD personnel. National Fuel states that if this assertion does not allay the Commission's concerns, it requests that its waiver not include OFO information or the training requirement for shared employees. National Fuel's filing cites its tariff provisions concerning the types of OFOs on its system.

114. National Fuel asserts that if Distribution stopped making off-system sales, even for the period during which it attempted to come into compliance with Order No. 2004, it would reduce benefits to Distribution's ratepayers. National Fuel states that Distribution's off-system sales revenue, according to National Fuel Gas Company's 2002 Annual Report and Form 10-K, were $68,606,000. National Fuel states that the net revenues from this amount were $3,219,000, of which $2,724,000 flowed back to rate payers. National Fuel asserts that the off-system sales provided a competitive alternative to off-system purchasers during times of heightened demand. In any event, National Fuel contends that the volume of Distribution's off-system sales is not relevant because Distribution has no access to information from National Fuel that gives Distribution any advantage over other market participants in sales which do not involve the use of National Fuel's system.

115. In its second supplemental petition for waiver, National Fuel states that the Commission's statement in Order No. 2004-B, P 18, that "an LDC would not be able to engage in financial or futures transactions or hedging without becoming an Energy

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[37] National Fuel's first supplemental petition at p. 12.

Affiliate" would disqualify Distribution from the LDC exemption because Distribution engages in such activities to support on-system sales. [38] If clarification or rehearing is not granted on this issue, in addition to its primary request for waiver, National Fuel seeks to expand its alternative request for waiver.

116. Finally, in the event that the Commission denies National Fuel's waiver request, National Fuel requests an extension of time of nine months to comply with the Standards of Conduct regarding Distribution and an additional 18-month transition period.

A. Public Notice, Interventions, and Protests

117. On March 19, 2004, Distribution filed a motion to intervene and answer in support of National Fuel's waiver request. On March 26, 2004, the Public Service Commission of the State of New York (New York PSC) filed a notice of intervention and comment in support of National Fuel's request. On June 16, 2004, Public Service Electric and Gas Company, PSEG Energy Resources & Trade LLC and PSEG Power LLC collectively filed a motion to intervene (PSEG Companies). [39] On June 25, 2004, Distribution filed an answer in support of National Fuel's supplement to its waiver request.

118. Distribution contends that if it is required to separate its personnel and facilities from National Fuel, it will reduce the reliability of National Fuel's ability to deliver firm gas supplies, particularly on a no-notice basis. Distribution contends that National Fuel's role in scheduling and monitoring upstream pipeline deliveries, operating its thirty one storage fields, and adjusting its operations in light of pressure in Distribution's system, in order to maximize deliveries and reliability on National Fuel's system, requires close and continuous communication between National Fuel and Distribution personnel. Distribution states that separation would eliminate the historical, continuous and integrated communication that would prevent either National Fuel or Distribution from knowing the unified demand and supply picture, thereby reducing efficiencies.

119. Distribution states that the most severe results from the lost efficiency would be Distribution's exposure to extreme and fast changing weather-related demands and the pervasive impact of Distribution's deliveries on all other National Fuel customers. Distribution asserts that because of Distribution's relative size and National Fuel's traditional control over its deliveries, National Fuel is able to maximize deliverability for its entire system by "swinging" its customers' demand in excess or in shortfall from

[38] National Fuel also seeks clarification or rehearing of this issue in Docket No. RM01-10-002.

[39] PSEG Companies actually filed its motion to intervene in Docket No. TS04-176-000, which is the docket for National Fuel's information filing, however, it is clear from the text that PSEG Companies seek to intervene in this waiver proceeding.

upstream pipeline suppliers by means of injections and withdrawals from Distribution's account out of or into National Fuel's storage fields.

120. Distribution contends that it has considered other alternatives to the separation, but that none is appropriate in terms of customer practicality. Distribution states that capacity release is not practical because of the timing of the off system sales and operation of the capacity market. Distribution states that stopping off-system sales would: (a) harm Distribution's customers by increasing the cost of gas by removing the credit they receive from off-system sales, and by reducing the efficiency of LDCs' use of their capacity; (b) harm other East Coast consumers who would have purchased the off-system sales, thus withholding market efficiencies provided by moving gas quantities to markets that value them most; and (c) decreasing the efficiencies of East Coast pipelines during periods when there are constraints and a need for incremental gas supplies. Distribution also states that its retail customers received a total of $5.3 million in credits as a result of off-system sales in 2003.

121. Distribution proposes to submit an annual report on June 1 of each year providing for each off-system sale the time, volume, price, delivery point and buyer. By doing so, Distribution states that the Commission would be able to review the transactions and monitor whether any correlation appeared between system conditions on National Fuel's and Distribution's upstream off-system sales. Distribution states that, because the reports would contain commercially sensitive information, it would file them under the confidentiality provisions of 18 C.F.R. § 388.112 (2004).

122. Distribution also supports National Fuel's request for an extension of time to implement the separation requirements of Order No. 2004 if the waiver request is denied. Distribution states that it would take a minimum of 12 to 18 months to ensure the maximum level of efficient and reliable operations. Distribution also stated that it would need at least a week to end off-system sales that would otherwise take place in September 2004.

123. New York PSC states that it supports National Fuel's waiver request to continue the safe and reliable operations of their respective gas systems and to avoid excessive and unnecessary compliance costs. New York PSC states that absent the requested waiver, National Fuel will be unable to share with Distribution information that is essential to the safe, efficient and reliable operation of their integrated systems such as nomination, scheduling and operation data (which it terms flow information) and basic information involving system pressures and capacity constraints. New York PSC states that if Distribution stops its off-system sales completely to avoid the designation of Energy Affiliate, it will lead to an increased cost to consumers associated with new balancing contracts and not tempered by any specific benefits to consumers.

B. **Discussion**

124. The Commission is denying National Fuel's primary request to exempt Distribution from Energy Affiliate status but believes that with modest restructuring, National Fuel will be able to provide dispatch services to Distribution. At this time, the Commission is not ruling on National Fuel's request for clarification or rehearing on Order No. 2004-B. The Commission will direct National Fuel to submit a restructuring plan within 30 days of an Order on Rehearing of Order No. 2004-B.

125. It appears from the petitions that the employees of Distribution who engage in Energy Affiliate activities (e.g., the employees responsible for acquiring gas supply for Distribution and arranging transportation of that supply on upstream pipelines) are in Distribution's GSAD department. To prevent undue preferences to Distribution, it is important that National Fuel not share transmission and third-party customer information with the employees of Distribution who engage in Energy Affiliate activities. For example, National Fuel states that it will not give Distribution advance information on OFOs. The Commission's concerns, however, are not limited to OFOs. National Fuel has third-party customer information as well as information from interconnecting pipelines which, if shared with those engaged in Energy Affiliate activities, would confer undue preferences on Distribution.

126. But based on the petitions for waiver, it also appears that most (or all) of the employees who perform Energy Affiliate activities for Distribution are located in GSAD, and the remaining employees of Distribution such as those involved in dispatch operations are not engaged in Energy Affiliate activities. Proper segregation of employees who perform Energy Affiliate activities could allow National Fuel to communicate with the remaining Distribution employees so long as the no-conduit rule was observed. Therefore, the Commission will direct National Fuel to submit a plan that addresses whether the employees who perform Energy Affiliate activities for Distribution are or will be sufficiently segregated from the remaining employees of Distribution so that National Fuel can continue to perform dispatch functions for Distribution without sharing prohibited information with the employees of Distribution who perform Energy Affiliate activities. As long as the employees of National Fuel and the employees of Distribution who do not perform Energy Affiliate functions observe the no-conduit rule, the benefits of the Standards of Conduct can be maintained while allowing National Fuel to perform dispatch functions for Distribution and eliminate any need for dual control rooms. National Fuel is directed to submit its compliance filing 30 days after the Commission rules on requests for rehearing of Order No. 2004-B.

127. In addition, as National Fuel recognized in the supplement to its waiver request, Order No. 2004-A revised section 358.5(b)(8) to allow Transmission Providers to share information necessary to maintain the operations of the transmission system with its

Energy Affiliates.[40] . Specifically, a Transmission Provider may share with its Energy Affiliate information that is necessary to operate and maintain the transmission system on a day-to-day basis.[41] It does not include transmission or marketing information that would give a Transmission Provider's Marketing or Energy Affiliate undue preference over a Transmission Provider's nonaffiliated customers in the energy marketplace. National Fuel may share day-to-day operational-type information with Distribution necessary to maintain the National Fuel's operations, including information on confirmations, nominations and schedules with upstream producers and gathering facilities, operational data relating to interconnection points, and communications relating to maintenance of interconnected facilities. If National Fuel has specific questions on whether a particular communication is allowed under this exception, it can seek informal guidance from the Commission's Hotline or formal guidance through a motion for clarification.

128. National Fuel's pre-existing waivers are in conflict with the LDC exemption of section 358.3(d)(6)(vi). National Fuel shall include in its compliance filing justification for continuing each of the pre-existing waivers.

129. Finally, the Commission will grant National Fuel an extension of time to comply with the additional Standards of Conduct promulgated under Order No. 2004 until 30 days after the Commission rules on the compliance filing National Fuel is herein directed to make.

Northern Border Pipeline Company (Northern Border) – TS04-208-000

130. Northern Border is an interstate natural gas pipeline company engaged in the transportation of interstate commerce of natural gas for others. It does not make any commercial sales of gas but it does make small operational purchases and sales of gas to increase or decrease line pack levels to balance or maintain the pipeline systems operational integrity. Northern Border is a partnership with two partners, Northern Border Intermediate Limited Partnership[42] (70 percent ownership) and TC PipeLines Intermediate Limited Partnership[43] (TC PipeLines) (30 percent ownership).

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[40] *Order No. 2004-A* at P 203.

[41] *Id.*

[42] Among its general partners is Northern Plains Natural Gas Company, a subsidiary of Enron Corporation and Northwest Border Pipeline Company, a subsidiary of TransCanada PipeLines Limited.

[43] TC PipeLines is a subsidiary limited partnership of TC PipeLines, LP, a publicly traded partnership. The general partner of TC PipeLines and its subsidiary

131. Northern Border states that it is operated by Northern Plains Natural Gas Company (Northern Plains) and that Northern Plains and its employees run Northern Plains because it does not have its own staff. In addition to operating Northern Border, Northern Plains also operates Viking Gas Transmission Company (Viking) and MidWestern Gas Transmission Company (MidWestern), both interstate gas pipelines that are Transportation Providers under the Standards of Conduct. Northern Border pointed out the fact that the employees that operate Northern Border function independently of Northern Border's Marketing Affiliate's employees.

132. Northern Border is seeking to allow the Gas Control department of Northern Plains, the Operator of Northern Border, to continue to provide certain operations monitoring services for an Energy Affiliate of Northern Border. Under the new Standards of Conduct, Bear Paw Energy, LLC (Bear Paw) and Crestone Energy Ventures, LLC (Crestone) are Energy Affiliates of Northern Border.[44] Bear Paw has natural gas gathering, processing and fractionation operations and gas gathering operations in Wyoming. Crestone and its subsidiaries own approximately 300 miles of gathering facilities in Wyoming.[45] Northern Border Partners, through Bear Paw and Crestone, owns interests in certain gas gathering facilities in Wyoming.

133. Northern Border states that during normal business hours, the Gas Control department of Bear Paw and Crestone monitor their own gathering facilities. After normal business hours and on weekends, Northern Plains monitors Bear Paw and Crestone's facilities in addition to monitoring Northern Border on a 24-hour basis. This service costs Bear Paw and Crestone about $170,000 annually and reduces what Northern Border would otherwise have to pay. Northern Border states that strict security has been installed in the system to that no information about Northern Border or its customers is accessible by Crestone and Bear Paw.

A. Public Notice, Interventions, and Protests

134. No motions to intervene or protests were filed.

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limited partnership is TC PipeLines GP, Inc., which is a subsidiary of TransCanada PipeLines Limited, which is a subsidiary of TransCanada Corporation.

[44] Both Bear Paw and Crestone are owned by Northern Border Partners, L.P.

[45] Http://www.northernborderpartners.com/nngg-_cev.htm (September 6, 2004).

B. Discussion

135. In Order Nos. 2204-A at P 97 and 2004-B at P 29-32, the Commission clarified that gatherers and processors affiliated with interstate pipelines are not Energy Affiliates in certain circumstances. If a gatherer or processor merely provides a gathering or processing service and only purchases natural gas to supply operational needs, and does not engage in other Energy Affiliate activities, then it is not an Energy Affiliate. It appears from Northern Border's filing that Bear Paw and Crestone engage in gathering functions, but it is not clear whether they engage in other Energy Affiliate activities. Within 30 days of the date of this order, Northern Border shall explain whether Bear Paw and Crestone are Energy Affiliates, as that term is defined at section 358.3(d) of the Standards of Conduct. Northern Border must specifically articulate the roles and responsibilities of the shared monitoring personnel and describe the procedures it will implement to protect customers of Northern Border. Because the Commission is directing Northern Border to submit a compliance filing, the Commission will not enforce the separation of functions and information disclosure prohibitions with respect to these shared employees until 30 days after the day the Commission rules on Northern Border's compliance filing. Northern Border shall implement the remaining provisions of the Standards of Conduct by September 22, 2004.

NorthWestern Energy (NorthWestern)– Docket No. TS04-3-000; TS04-3-001

136. On January 21, 2004, NorthWestern filed a request for clarification, or in the alternative a limited exemption from Order No. 2004 regarding its crosstraining and sharing of gas and electric operation employees at its Montana control center. Additionally, NorthWestern filed a request that the Commission continue its waiver of Order No. 889 regarding its South Dakota electric operations since it is a small public utility and not a member of a tight power pool.[46]

137. NorthWestern owns and operates electric and natural gas transmission and distribution facilities primarily in Montana and South Dakota. The Montana and South Dakota facilities operate at different locations, in different NERC regions and have separate OATT.

138. In Montana, NorthWestern's electric transmission system consists of 7,000 miles of transmission lines serving 97,540 square miles, approximately two-thirds of Montana, and is interconnected to five major transmission systems within the Western Electricity Coordinating Council area. NorthWestern's gas transportation systems consist of 2,000 miles of pipeline and three storage facilities located within Montana.

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[46] *Midwest Energy, Inc. et al.*, 77 FERC ¶ 61,208 at 61,853(1996). NorthWestern previously did business as Northwestern Public Service Company.

NorthWestern states that its natural gas operation is a Hinshaw Pipeline regulated by the Montana Public Service Commission (MPSC) and functions as an LDC dedicated to satisfy its retail default supply load.[47] NorthWestern states in 2003, 86 percent of its total transportation throughput and 100 percent of its firm storage service was attributable to intrastate transactions, and 14 percent of its transportation services, or 6.27 million MMBtu, were off-system transmission to approximately eight customers under a FERC-approved Order No. 63 certificate.[48]

139. In Montana, NorthWestern's electric transmission and gas transportation operations are centralized within a single control center.[49] NorthWestern states that the Transmission Operations/Planning and Transmission Scheduling functions perform services for NorthWestern's electric transmission functions and gas distribution functions. In addition, NorthWestern states that the gas and electric transmission operators are cross trained to ensure full coverage in during emergencies and vacation schedules.[50] For the same reason, the gas and electric schedulers in the transmission scheduling department are also trained in both gas and electric scheduling.[51] However,

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[47] NorthWestern states its Hinshaw pipeline divisions possess a limited-jurisdiction certificate from the Commission under Order No. 63.

[48] *Montana Power Co.*, 53 FERC ¶ 62,237 (1990); *see also Certain Transportation, Sales and Assignments by Pipeline Companies Not SubjectTto Commission Jurisdiction Under Section 1 of the Natural Gas Act,* Order No. 63, 45 Fed. Reg. 1872 (January 9, 1980), FERC Stats. & Regs., Regulations Preambles 1977-1981 ¶ 30,118 (January 3, 1980).

[49] NorthWestern states that formerly the electric and gas operations were in separate facilities, and then combined them after union negotiations with the electric and gas operators. Now, electric and gas operators are required to learn and be able to perform each others' duties.

[50] NorthWestern states that the gas transmission operator's duties include dispatching gas, starting and stopping compressors, operating valves, and monitoring and managing pressures on the gas transmission system. The electric transmission operator's duties include real time management of the OASIS, switching and monitoring of the electric transmission system.

[51] NorthWestern states that the electric scheduling duties include management of the OASIS including posting of TTC and ATC, and processing both network and point-to-point reservations for both wholesale and unbundled retail customers pursuant to its OATT. The electric transmission specialist creates the pre-schedules for the day ahead or multiple days ahead transmission transactions to give to the system operations to manage in real time. The gas scheduling duties include processing daily nominations on the gas

NorthWestern states that during any shift the employees work solely in either gas or electric, and do not simultaneously perform both duties.

140. NorthWestern requests that the Commission clarify that in Montana its natural gas operation is not an Energy Affiliate of its electric operation. NorthWestern argues that it cannot be an Energy Affiliate to itself, that its gas operation is an intrastate pipeline dedicated to satisfy its retail default supply load and that it does not engage in financial transactions.

141. In the alternative, NorthWestern requests that the Commission waive the independent functioning requirement so NorthWestern can continue to operate a centralized control center. NorthWestern states pursuant to state and federal law, it has already restructured its operations to separate its marketing, transmission and distribution operations. NorthWestern argues that there is good cause to grant a partial waiver because: (1) in compliance with Montana state law and MPSC's Standards of Conduct NorthWestern's default supply marketing employees already operate independently from its transmission employees; (2) as a Hinshaw pipeline, the Commission should not assert jurisdiction over a state regulated facility; and (3) requiring NorthWestern to separate its gas and electric operators and schedules would significantly increase costs. NorthWestern states that in order to comply, it would have to create new and separate control room at a estimated cost ranging from $100,000 to $1.5 million, and hire and train new staff to act as replacements at an estimated cost exceeding $220,000 per year. NorthWestern states that having filed for Chapter 11 bankruptcy in September 2003, it is already in a weakened financial condition.

142. In South Dakota, NorthWestern's operations belong to the MAPP within the Eastern Interconnect of the United States. NorthWestern states that its South Dakota operations serve 57,287 retail customers and seven wholesale customers with 2003 sales of 1,500,000 MWh and had a peak load of 272.14 Mw. NorthWestern states that it provides transmission service pursuant to its South Dakota OATT. Furthermore, NorthWestern states that the Western Area Power Administration operates the control area, controlling its 322 miles of 115 kV lines and all of its energy marketing. NorthWestern states that its dispatchers only control the remaining 259 miles of 69 kV lines. In 1996, the Commission granted NorthWestern a waiver of Order of Order 889 for its South Dakota operations because it met the definition of a small public utility, was not a member of a tight power pool, and there were no other circumstances that indicated a waiver was not justified.[52]

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transmission and storage system, and the negotiation and administration of contracts for products and services offered pursuant to the state regulated gas transmission tariff.

[52] *Midwest Energy, Inc. et al.*, 77 FERC ¶ 61,208 at 61,853 (1996).

A. Interventions, Protests and Comments

143. No interventions, protests or comments were filed.

B. Discussion

144. In Order No. 2004-A, the Commission clarified that that a Hinshaw pipeline division of an electric Transmission Provider is a division that acts as a functional unit and, therefore, can be an Energy Affiliate.[53] NorthWestern claims that its LDC division does not meet the criteria of an Energy Affiliate. Specifically, NorthWestern claims that its LDC division does not engage in or is involved in interstate transmission capacity (section 358.3(d)(1)) nor does it manage or control transmission capacity of a Transmission Provider (section 358.3(d)(1)) because it does not provide interstate transmission services. NorthWestern misinterprets the criteria of section 358.3(d)(1) and (2). As discussed in Order No. 2004-A, these acts of engaging in or being involved in transmission activities means that the affiliate holds (or is requesting) transmission capacity on any Transmission Provider as a shipper or customer or buys or sells transmission capacity in the secondary capacity market. The phrase "involved in" means acting as agent, asset manager, broker or in some fashion managing, controlling or aggregating capacity on behalf of transmission customers or shippers. NorthWestern has not explained whether it participates in any of the activities included in sections 358.3(d)(1) and (2). NorthWestern also suggests that its LDC division does not meet the criteria of section 358.3(d)(3) because it does not buy, sell, trade or administer natural gas or electric energy by stating that it does not make any sales for resale. NorthWestern has erroneously applied criteria for marketing, sales or brokering from section 358.3(e) (making sales for resale) to section 358.3(d)(3). They are not the same. It appears that the LDC division buys and sells natural gas, but it is not clear whether it engages in any off-system sales. Finally, NorthWestern claims that the LDC division does not participate in any financial transactions.

145. Although, NorthWestern's LDC division may qualify for an exemption under section 358.3(d)(6)(v), [54] NorthWestern has not provided adequate information for the Commission to determine whether it qualifies for such exemption. Within 30 days of the

[53] *Order No. 2004-A* at P 70. *See also Order No. 2004-B* at P 24.

[54] Under section 358.3(d)(6)(v), the term Energy Affiliate does not apply to a state-regulated LDC that acquires interstate transmission capacity to purchase and resell gas only for on-system customers, and does not otherwise engage in the activities described in sections 358.3(d)(1), (2), (3) or (4), except to the limited extent necessary to support on-system customers and to engage in de minimus sales necessary to remain in balance under applicable pipeline tariff requirements.

date of this order, NorthWestern must provide additional information explaining, in detail, whether its LDC division participates in any of the activities described in section 358.3(d)(3)(1), (2) and (3). The Commission will not enforce the separation of functions of the Standards of Conduct until 30 days after the date the Commission rules on NorthWestern's compliance filing. NorthWestern's Montana operation must comply with the remaining requirements of Order No. 2004 by September 22, 2004.

146. Regarding NorthWestern's South Dakota operations, the Commission is affirming NorthWestern's waiver of the Standards of Conduct under Order No. 2004. In Order No. 2004 we stated we would continue any exemptions or partial waivers granted under Order No. 889. Such exemptions or waiver can be revoked if the Transmission Provider no longer qualifies or has abused the exemption.[55] NorthWestern's South Dakota operations continue to qualify as a small utility that is not a member of a tight power pool. Therefore, NorthWestern's South Dakota operation is not required to comply with the Standards of Conduct under Order No. 2004.

Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation (OVEC) -- Docket No. TS04-252-000

147. On February 7, 2004, OVEC requested a limited waiver of the Standards of Conduct or, in the alternative, clarification to permit its small control room staff to operate as a single unit regardless of certain discrete activities that might be deemed "marketing, sales or brokering" activities.

148. OVEC was created by fifteen investor-owned utilities furnishing service in the Ohio Valley area. Indiana-Kentucky Electric Corporation, OVEC's subsidiary, owns two coal-fired generating stations, the Kyger Creek Plant in Cheshire, Ohio and the Clifty Creek Plant in Madison, Indiana. According to OVEC, these generating stations are connected by a network of 776 circuit miles of 345,000-volt transmission lines in Ohio, Indiana and northern Kentucky. OVEC states that these lines also interconnect with the major power transmission networks of several of the utilities that formed OVEC or their affiliates (called its "Sponsoring Companies").

149. OVEC has two principal power sales agreements: (1) a short-term "arranged power" between OVEC and the U.S. Department of Energy (DOE) in which OVEC purchases energy from selected third parties to meet the power and energy requirements of DOE's Ohio enrichment facility which is currently operated in a "cold standby" status, and (2) the Inter-Company Power Agreement between OVEC and its Sponsoring Companies which grants the Sponsoring Companies to purchase all surplus energy not needed to serve DOE's Ohio enrichment facility.

[55] *Order No. 2004* at P 27.

150. OVEC contends that its generating capacity and energy output are fully committed. OVEC also contends that it does not sell any capacity or energy in the competitive market and does not have Commission authority to sell electricity at market-based rates. According to OVEC, all power and energy generated by OVEC is taken by the Sponsoring Companies. OVEC notes that its sales of power to DOE represent its only retail sales and the terms of those sales are based on third-party offers to meet DOE's requests for energy, with the resulting costs flowed through to DOE on a bundled basis. OVEC, therefore, contends that these sales of committed capacity are not the "marketing, sales or brokering" functions covered by the Standards of Conduct.

151. OVEC also notes that it has a small staff engaged in transmission scheduling and reliability functions. According to OVEC, approximately 13 employees are responsible for the day-to-day transmission scheduling and reliability functions in its control room in Piketon, Ohio, with as few as two employees on duty in the control room during the night shift. OVEC states that many of its control room employees perform multiple functions.[56]

152. OVEC contends that the Standards of Conduct would require it to transfer essential system operations personnel to a separate "marketing" department and to hire and train additional employees to support the depleted shifts. OVEC also contends that the creation of a separate "marketing" department will result in increased costs and a potential decrease in reliability. In addition, OVEC avers that it might be required to build new facilities and modify or acquire computer or other equipment. OVEC argues that the creation of a "marketing" department and the segregation of those employees is unnecessary and wasteful.

153. OVEC requests an extension of time to comply with any requirements regarding the separation of its internal business functions. In addition, if the Commission fails to grant all or part of the requested waiver or clarification, OVEC requests an extension of time of at least 180 days to comply with any requirements regarding the separation of OVECs internal business functions. OVEC states that it intends to fully comply with all

[56] OVEC's reliability coordinators generally are responsible for all control area functions and other transmission and reliability operations, while OVEC's energy sales coordinators generally are responsible for the scheduling of energy sales under its two power sales agreements. According to OVEC, these coordinators work closely together and periodically perform the functions of the other coordinator on duty or otherwise provide support to ensure the reliable functioning of OVEC's transmission system.

of the other requirements of Order No. 2004, including the implementation of, and compliance with, the standards of conduct with respect to the sharing of information between OVEC and any Energy Affiliates and the posting of all required information.

A. Interventions, Protests and Comments

154. No comments, protests or motions to intervene were filed.

B. Discussion

155. The Commission is denying OVEC's request for partial waiver of the Standards of Conduct in order to share marketing and transmission employees and to permit those employees to perform both marketing and transmission functions in a single control room. The fundamental purpose of the Standards of Conduct is to prevent the sharing of employees and information by the Transmission Provider and its Energy Affiliates that would give the Energy Affiliate undue advantage in the competitive energy market. Compliance with the Standards of conduct would not necessarily require building new facilities. Password protection, locked file rooms and other security measures are mechanisms that can be used to successfully implement the Standards of Conduct. Within 30 days of the date of this order, OVEC shall make a compliance filing explaining how it will comply with the independent functioning requirement in its control room. Because the Commission is directing OVEC to submit a compliance filing, the Commission will not enforce the separation of functions or information sharing prohibitions with respect to these employees until 30 days after the date the Commission rules on OVEC's compliance filing. OVEC shall implement the remaining provisions of the Standards of Conduct by September 22, 2004.

Panther Interstate Pipeline Energy, L.L.C. (Panther) – Docket No. TS04-184-000

156. On June 15, 2004, Panther filed a request for partial waiver of the Standards of Conduct. Panther is a new joint-venture pipeline that commenced operations on January 30, 2004, and connects offshore production with the Natural Gas Pipeline Company of America (Natural) pipeline system.[57] Panther consists of a 25-mile FERC-jurisdictional interstate pipeline (22 miles of 16-inch offshore pipeline and 3.12 miles of 20-inch onshore pipeline). Panther claims that it does not have any firm customers and does not provide transportation service to any of its affiliates.

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[57] Panther is equally owned by Panther Pipeline, Ltd. and Prism Gas Systems, Inc. (Prism), both unregulated gathering companies.

157. Under a management services agreement,[58] Panther is managed by Panther Energy Services, Inc. (PESI), which is affiliated with one of its owners, Panther Pipeline, Ltd. Among other things, PESI performs billing, contracting and management-related services. Panther claims that due to its structure, there is not much day-to-day operational management. The only interconnection is operated by Natural and there is no compression or storage on the system. Panther also states that PESI's activities are separate and remote from those of Panther and that PESI does not produce, process, own, or market any gas that is transported by Panther, and it will not engage in any of these activities on Panther while the limited exemption requested herein is in effect. Panther argues that it would incur significant costs if it were required to terminate the management agreement with PESI. PESI's responsibilities for Panther include transmission functions such as day-to-day duties and responsibilities for planning, directing, organizing and carrying out transmission-related activities.

158. Panther states that the Commission already granted it a waiver from the requirement to operate an interactive Internet website, but it does have an Internet website.[59] Panther has agreed to comply with the posting requirements, including posting on its website the names, titles, and representations of all employees of both itself and PESI involved in Panther's management to ensure full disclosure.

A. Public Notice, Interventions, and Protests

159. No interventions or protests were filed in this docket.

B. Discussion

160. The Commission will grant Panther's request for a limited waiver from the Order No. 2004 Standards of Conduct, specifically, the provisions of sections 358.4(a) of the Commission's regulations dealing with separations of functions and sections 358.5(a)(1) and (1) and (b)(1), (2) and (3) of the Commission's regulations dealing with information access and disclosure with respect to PESI. Waivers of these provisions are

[58] This Management Services Agreement was filed with the Commission in Docket Nos. CP03-338-000, CP03-339-000, and CP03-340-000 between Panther and Panther Energy Services, Inc. (PESI).

[59] *Natural Pipeline Company of America and Panther Interstate Pipeline Energy, LLC*, 105 FERC ¶ 61,383 at P 26 (2003). Panther is required to maintain an up-to-date website that is publicly accessible and contains information and instructions associated with open-access service on its system.

warranted because of Panther's small size, lack of staff and limited operations. By September 22, 2004, Panther shall implement the remaining Standards of Conduct for which it has not received a waiver.

Petal Gas Storage, L.L.C. (Petal) – TS04-263-000

161. On July 27, 2004, Petal filed a request for temporary limited waivers of compliance with certain requirements of the Standards of Conduct.[60] Petal is owned by GulfTerra . El Paso has an indirect 50 percent ownership interest in the general partner of GulfTerra. In the July 27th filing, Petal stated that El Paso, Gulf Terra and Enterprise are in the process of merging the operations of Enterprise and GulfTerra. After completion of the merger, GulfTerra will be a wholly-owned subsidiary of Enterprise. Petal explains that El Paso will have an economic interest in Enterprise but will not have any ability to control, directly or indirectly, the management or policies of Enterprise.[61] On August 6, 2004, Petal filed a supplement stating that on July 29, 2004, GulfTerra and Enterprise publicly announced that their unitholders had approved the merger and that it expects that the merger will close in the third quarter of 2004.

162. In its July 27th filing, Petal states that it needs additional time following the close of the merger to address certain procedural requirements of the Standards of Conduct. Specifically, Petal requests that the Commission grant temporary limited waivers of the following regulations for a period of 45 days following the closing of the Enterprise/GulfTerra merger: posting and updating comprehensive organizational charts showing the information required by sections 358.4(b)(3)(i) through (iv); posting notices of employee transfers between a transmission provider and any marketing or energy affiliates, section 358.4(c); posting written procedures for implementing the Standards of Conduct, section 358.4(e)(3); distributing written procedures to all transmission provider employees and employees of marketing and energy affiliates, section 358.4(e)(4); and training of Transmission provider employees, section 358.4(e)(5). In its July 27th filing, Petal states that it will comply with the other requirements of Order No. 2004 by September 1, 2004. Petal states that upon closing of the merger, and throughout the post-merger adjustment period, Petal will ensure that compliance with the separation of

[60] Previously, on April 8, 2004, Petal filed a request for an exemption from compliance with the separation of functions requirements of Order No. 2004, sections 358.4(a) and 358.5(a) and (b). On July 8, 2004, Petal filed a notice of withdrawal of its request for partial exemption filed on April 8, 2004.

[61] El Paso will own approximately 3.9 percent of the publicly traded units of Enterprise and a 9.9 percent indirect passive ownership interest in Enterprise Products GP, LLC.

functions requirements, as well as most other Standards of Conduct requirements, is maintained. Petal does not seek waivers of any provisions not specifically identified above.

A. Public Notice, Interventions, and Protests

163. No interventions, protests or comments were filed.

B. Discussion

164. The Commission is granting Petal a 30-day limited waiver after the close of the merger for the following requirements: sections 358.4(b)(3)(i) through (iv) (posting organizational charts); section 358.4(c) (posting employee transfers); section 358.4(e)(3) (posting procedures); section 358.4(e)(4) and (5) (distributing procedures and training employees). Although the Commission deferred the implementation date for compliance with the Standards of Conduct to September 22, 2004, in Order No. 2004-B, it does not appear that the merger has closed and Petal will not be in compliance by September 22, 2004. Thirty days should be adequate to comply with these provisions and it is consistent with the period of time the Commission affords newly certificated pipelines.

PPL Electric Utilities Corporation (PPL) – TS04-71-000

165. On June 14, 2004, PPL filed a request for clarification of Order No. 2004, or in the alternative, a limited exemption from Order No. 2004's independent functioning requirements. PPL is a public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce. North Penn Gas Co. (North Penn) is a Hinshaw pipeline with 1,181 miles of pipeline mains serving 39,900 customers in Pennsylvania. North Penn owns the Tioga Storage Complex jointly with CNG Transmission Corp. (CNG). The Tioga Complex is operated by CNG. PFG Gas, Inc. (PFG) is an LDC with 2,706 miles of pipeline mains that distributes gas to 35,500 customers in Pennsylvania and Maryland. Since PPL, North Penn, and PFG are wholly owned subsidiaries of PPL Gas Utilities, North Penn and PFG are Energy Affiliates of PPL.

166. PPL requests clarification that three PPL employees who perform ratemaking and tariff administration functions for PPL, PFG, and North Penn are not transmission function employees and, under Order No. 2004, PPL may share these employees with PFG and North Penn. The duties of these employees include: developing rate design; preparing testimony and testifying in rate proceedings; and general tariff administration, such as calculating gas cost adjustment charges on a monthly and annual basis. PPL contends that the employees should not be considered transmission function employees since they do not perform reliability functions, nor should they be considered "operating"

employees as defined by the Commission in Order No. 497-E.[62] PPL states that the employees are not engaged in the day-to-day marketing, sales, transmission, or other electric-related operations of PPL and they do not have the ability to control PPL's operations.

167. In the alternative, PPL requests a limited exemption from Order No. 2004's independent functioning requirements to allow PPL to share the three ratemaking and tariff administration employees with PFG and North Penn. PPL contends the policy supporting the independent functioning requirement would not be served by PPL having separate employees, since PFG and North Penn do not compete for capacity on PPL's transmission system and neither PFG nor North Penn provide transportation services to independent generators that compete in the same wholesale markets for electricity as PPL. Moreover, PPL contends that that it does not operate or self-schedule any generating facilities and could therefore not make use of any information regarding the availability of natural gas transmission capacity. PPL claims the employees could not take action on electric transmission information that might benefit PFG or North Penn and that there are no scenarios under which PPL could favor PFG or North Penn in the provision of interstate electric transmission service. PPL states that requiring separate PPL employees to perform the ratemaking and tariff administration functions would be economically inefficient.

A. **Public Notice, Interventions, and Protests**

168. No interventions, protests or comments were filed.

B. **Discussion**

169. The Commission denies PPL's request for clarification and its alternative request for a limited exemption from Order No. 2004. The three shared PPL employees who perform ratemaking and tariff administration functions for PPL, PFG, and North Penn are transmission function employees under Order No. 2004. As stated in Order No. 2004-A,[63] Order No. 2004 replaced the term "operating employee," which was originally defined in Order Nos. 497-E and 497-F, with the term "Transmission Function Employee." The term "operating employee" and "Transmission Function Employee" are not identical. In Order No. 497-E, the Commission defined "operating employee" as "an individual who has day-to-day duties and responsibilities for planning, directing,

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[62] *Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipeline*, Order No. 497-E, FERC Stats. & Regs. 1991-1996 ¶ 30,987 at 30,996 (1993).

[63] *Order No. 2004-A* at P 130.

organizing, or carrying out gas-related operations, including gas transportation, gas sales or gas marketing activities."[64] The term "Transmission Function Employee" is defined as "an employee, contractor, consultant or agent of a Transmission Provider who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing organizing or carrying out transmission-related operations."[65] Order No. 2004-A also clarifies that there may be "Transmission Function Employees" who do not engage in "day-to-day" activities, but are performing, on less frequent, but equally as significant basis, transmission functions.[66] Activities such as designing rates, administrating tariffs (which establish rates for service as well as the terms and conditions of service for the transmission of electricity or transportation of natural gas, including operating conditions), and calculating gas cost adjustment charges are transmission functions that involve the planning and carrying out of transmission-related operations.

170. The Commission finds that the independent functioning requirements of Order No. 2004 should apply to the three shared PPL employees. They may not serve as conduits for sharing transmission, customer or market information with a marketing or energy affiliate. The employees may have a significant amount of access to the transmission provider's transmission, customer and marketing information. Order No. 2004 found that preferential sharing of information between transmission providers and energy affiliates undermines and frustrates the efforts of independent businesses to buy, sell, build, grow, and provide competitive alternatives.[67] PPL's contentions that the employees could not take action on electric transmission information that might benefit PFG or North Penn, that PPL could not favor PFG or North Penn in the provision of interstate transmission service, and that PPL could not make use of any information regarding the availability of natural gas transmission capacity is unsupported. Additionally, PPL may be able to use information received from PFG or North Penn to benefit other affiliates in the corporate family. The Commission has considered the costs of PPL's compliance with the revised Standards of Conduct, and finds, on balance, that the costs are reasonable to achieve the Commission's goal of preventing unduly discriminatory behavior in a competitive market.[68]

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[64] *Order No. 497-E*, FERC Stats. & Regs., Regulations Preambles January 1991 – June 1996 ¶ 30,987 at 30,996.

[65] *See* 18 CFR § 358.3(j) (2004).

[66] *Order No. 2004-A* at P 131.

[67] *Id.* at P 6.

[68] *Id.* at P 20.

Questar Pipeline Company, Overthrust Pipeline Company and Questar Southern Trails Pipeline Company – Docket No. TS04-231-000

171. On February 10, 2004, Questar Pipeline Company, Overthrust Pipeline Company and Questar Southern Trails Pipeline Company (collectively referred to as the Questar Companies) filed a request that the Commission exempt their affiliated companies, Questar Gas Company, a state regulated LDC and a state regulated Hinshaw pipeline, and Questar Transportation Services Company, a gas processing and gathering affiliate, from the term Energy Affiliate. Overthrust Pipeline and Questar Southern Trails are affiliates of Questar Pipeline. The three companies are operated on a coordinated basis using common transmission function employees.

172. The Questar Companies state that Questar Pipeline and Questar Gas have achieved tremendous cost savings as a result of operational and managerial integration that dates back decades. The Questar Companies maintain that separation of Questar Pipeline and Questar Gas would destroy efficiencies, require $53 million in construction costs, raise costs to consumers by approximately $16 million annually, reduce service reliability, reduce the total firm capacity on Questar Pipeline by about 106,000 Dth per day, and reduce service flexibility to all shippers. The $16 million reflects additional personnel costs, office and equipment costs, including computer costs, and investments in new facilities needed to preserve the operation of the pipeline at current service levels. The Questar Companies state that imposing a separation requirement requires hiring new personnel and development of new protocols for exchanging operational informational.

173. The Questar Companies state that as a state regulated LDC that does not make any off-system sales, Questar Gas is exempt from the definition of an Energy Affiliate by section 358.3(d)(5)(v). The Questar Companies state that Questar Gas' status as a Hinshaw pipeline brings Questar Gas back into the definition of an Energy Affiliate and defeats the effectiveness of the exemption. The Questar Companies state that since Questar Gas' services are state-regulated, there is no danger that it will exercise market power over its customers.

174. The Questar Companies state that Questar Transportation Services Company buys natural gas for its own operational needs in order to perform CO2 removal services so that the gas delivered by Questar Pipeline to the Questar Gas city-gates satisfies the heat characteristics necessary for Questar Gas' retail customers. Questar Transportation does not sell gas for resale and does not ship gas for its operational needs on its affiliated pipeline.

175. On August 17, 2004, the Questar Companies filed a Request for Expedited Clarification of two issues related to specific retail service obligations. The Questar Companies seek clarification from the Commission that Questar Gas will not lose its LDC-exemption from the definition of an Energy Affiliate when Wexpro, a production

affiliate, sells natural gas owned by Questar Gas that cannot be economically delivered to Questar Gas' distribution system or when Questar Gas arranges for an exchange of equivalent quantities of natural gas in the field so that gas can be delivered more economically to Questar gas' retail customers by avoiding transportation costs.

A. Interventions, Protests and Comments

176. Public Service Electric and Gas Company, PSEG Energy Resources & Trade LLC and PSEG Power LLC (collectively referred to as "PSEG Companies") filed a motion to intervene.

B. Discussion

177. In Order No. 2004-A, the Commission stated that a State-regulated LDC is exempt from the definition of Energy Affiliate if it provides solely retail service and engages in no off-system or other Energy Affiliate activities.[69] Additionally, in Order No. 2004-A, the Commission recognized that an LDC serving only its on-system customers must comply with balancing requirements and may be required to buy or sell *de minimus* quantities of gas in the wholesale commodity market, purchase short term park and loan storage services, buy or sell imbalances in the pipeline's cash out mechanism, or take steps to meet balancing tolerances.[70] In Order No. 2004-B, the Commission expanded section 358.3(d)(6)(vi) to permit intrastate and Hinshaw pipelines to make *de minimus* sales and purchases of natural gas to keep their systems in balance without becoming Energy Affiliates.[71]

178. Questar Gas is not deemed to be an Energy Affiliate when Wexpro sells natural gas owned by Questar Gas that cannot be economically delivered to Questar Gas' distribution system. The revenues are passed through to Questar Gas' retail customers through credits pursuant to agreements approved by the Utah Public Service Commission and the Public Service Commission of Wyoming.

179. The Commission will not deem Questar Gas to be an Energy Affiliate when it engages in an exchange of natural gas in the field from company-owned production for equivalent quantities of gas that is closer to its distribution system in order to lower the delivered cost of gas for on-system retail sales. The so-called "field exchange" will not

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[69] Energy Affiliate activities include acting as a merchant, agent, or asset manager for others.

[70] *Order No. 2004-A* at P 61.

[71] *Order No. 2004-B* at P 43.

be treated as an off-system sale of gas for the purpose of triggering the rules so long as all of the net exchange received serves to supply on-system bundled retail customers.

180. In Order No. 2004-A, the Commission clarified that gatherers and processors that are not involved in or engage in transmission transactions, do not manage or control transmission capacity, do not buy, sell, trade or administer natural gas or electric energy, and do not engage in financial transactions relating to the sale or transmission of natural gas or electric energy are not Energy Affiliates.[72] Questar Transportation processes CO2 and only purchases natural gas to supply its operational needs. An exemption is not necessary since the purchases are to supply the operational needs of Questar Transportation.

Saltville Gas Storage Company LLC (Saltville) – Docket No. TS04-152-000

181. On February 9, 2004, Saltville Gas Storage Company L.L.C. (Saltville) filed a request for waiver or exemption from section 358.4(e)(1) of the Standards of Conduct to permit Virginia Gas Pipeline Company (Virginia Gas), an affiliate, to continue as Saltville's operating manager. At the time of the filing, Saltville was not yet a Transmission Provider as defined in Order No. 2004. However, on June 14, 2004, the Commission issued Saltville a conditional certificate under NGA section 7(c)[73] and blanket transportation and construction certificates under Subpart G of Part 284 and Subpart F of Part 157. On June 25, 2004, Saltville conditionally accepted the certificates.[74]

182. Saltville's two members are NUI Saltville Storage, Inc., a wholly-owned subsidiary of NUI Corporation (NUI) and Duke Energy Saltville Gas Storage, L.L.C., a wholly-owned subsidiary of Duke Energy Gas Transmission (Duke). Virginia Gas, an affiliate of NUI, is designated as Saltville's operating manager. Saltville does not have any transmission function employees of its own. Saltville's storage project in Smyth and Washington Counties, Virginia includes the conversion of four existing salt caverns for the underground storage of natural gas, compression facilities, and a 6.7-mile, 24-inch pipeline connecting the storage and compression facilities to East Tennessee Natural Gas Company's pipeline system. Saltville anticipates that for the foreseeable future, almost

[72] *Order No. 2004-A* at P 77.

[73] 15 U.S.C. § 717f (2000).

[74] *Saltville*, 107 FERC ¶ 61,267 (2004).

all of the gas stored in Saltville's facilities would be gas stored on behalf of, and ultimately delivered to, customers outside of Virginia.[75] Saltville receives certain regulatory and technical support services from employees of Duke.

183. Saltville requests that the Commission find that Virginia Gas, an affiliated Hinshaw pipeline company, is not an Energy Affiliate under the Standards of Conduct, but an affiliated transmission provider. Virginia Gas owns and operates an existing natural gas storage facility and pipeline system adjacent to the Saltville facilities. Virginia Gas is subject to rate and service regulation by the Virginia State Corporation Commission. Virginia Gas also holds a FERC limited blanket certificate to perform jurisdictional storage service. Saltville also states that Virginia Gas does not engage in wholesale commercial sales service, is not in a position to gain unfair advantage from access to Saltville's nonpublic transmission operation or customer information, and does not engage in off-system sales activities except for limited operational sales to stay in balance. Saltville plans to treat all Virginia Gas employees involved in the operations of Saltville as employees of a Transmission Provider for purposes of Order No. 2004. Saltville argues that Hinshaw pipelines that do not make off-system sales should be exempt from the definition of energy affiliate, like interstate pipelines and state-regulated LDCs, since they are regulated by state governments and the Commission to the extent that they engage in jurisdictional interstate transportation.

184. In the alternative, Saltville requests that the Commission grant waiver of section 358.4(e)(1) of the Standards of Conduct and any other waiver deemed necessary for Saltville to rely upon Virginia Gas as its operating manager. Saltville cites the relatively small size, geographic proximity, similarity of Virginia Gas' and Saltville's businesses, and economic efficiencies in support of the waiver request. Saltville claims that it would likely be required to purchase new computers, software, hire experienced operations personnel, and construct a new control facility to eliminate Virginia Gas as operator of Saltville's facilities. Saltville estimates the associated costs might exceed one million dollars and in addition its operating costs would increase substantially. Saltville asserts that Virginia Gas is not in a position to misuse Saltville's confidential data since Virginia Gas is obligated under Virginia law and its tariff to provide service in a nondiscriminatory manner. Saltville states that Virginia Gas' principal place of business and offices of all its employees are physically separated from other affiliates' offices.

A. <u>Public Notice, Interventions, and Comments</u>

185. No interventions, protests or comments were filed.

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[75] *Saltville*, 104 FERC ¶ 61,273 (2003).

B. Discussion

186. Based on Saltville's statements, it appears that Virginia Gas is not an Energy Affiliate of Saltville under the Standards of Conduct. Virginia Gas is a Hinshaw pipeline that makes limited operational sales of natural gas under applicable tariff requirements and otherwise does not engage in the activities described in sections 358.3(d)(1), (2), (3), or (4). In Order No. 2004-A, the Commission stated that Hinshaw pipelines that are state-regulated LDC's, make no off-system sales, and do not engage in any of the activities described in section 358.3(d) are not Energy Affiliates.[76] In Order No. 2004-B, the Commission stated that Hinshaw pipelines should be permitted to make *de minimus* sales and purchases of natural gas to keep their systems in balance without becoming energy affiliates on account of that balancing and added new section 358.3(d)(6)(vi).[77] The new section states that an Energy Affiliate does not include a Hinshaw pipeline that makes incidental purchases or sale of *de minimus* volumes of natural gas to remain in balance under applicable pipeline tariff requirements and otherwise does not engage in the activities described in sections 358.3(d)(1), (2), (3), or (4). Since it appears that Virginia Gas is not an Energy Affiliate of Saltville, the Commission finds that Saltville's request for waiver to allow Virginia Gas to remain operating manager of Saltville is moot. However, to the extent that Virginia Gas employees perform transmission function services for Saltville, those employees are subject to the Standards of Conduct as if they were directly employed by Saltville.

187. Order No. 2004-B states that a new pipeline will have 30 days after it accepts its certificate or otherwise becomes subject to the Commission's jurisdiction (whichever comes first) to come into compliance with the Standards of Conduct.[78] Since Saltville accepted its certificates on June 25, 2004. Saltville must be in compliance with the Standards of Conduct by September 22, 2004.[79]

Shell Gas Transmission, LLC (SGT) – Docket No. TS04-274-000

188. On July 26, 2004, SGT filed a request for a temporary limited exemption from the information sharing requirements of section 358.5 of the Standards of Conduct on behalf of Nautilus Pipeline Company, LLC, Garden Banks Gas Pipeline, LLC and Stingray Pipeline Company, LLC (SGT Pipelines). SGT states that each of the SGT Pipelines is

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[76] *Id.* at P 93.

[77] *Id.* at P 43.

[78] *Id.* at P 137.

[79] *See Id.* at P 10.

jointly owned. Marathon Oil Company, Enterprise Products Operating, LP, and Amerada Hess each owns partial interests in one or more of the SGT Pipelines, and representatives from each company sit on the Management Committee of the pipeline for which it is a joint venture partner. The Limited Liability Corporation agreement for each pipeline sets forth the rights and obligations of the owner, including participation on a Management Committee that, among other things, approves new service contracts and new capital investments. SGT states that the joint owner representatives on the pipeline Management Committee must receive information regarding the pipeline's performance, prospects and contracts to effectively exercise their rights and manage the pipeline company and their investment.

189. SGT states that the Management Committee does not operate the pipelines on a day-to-day basis, but they do review individual shipper contracts and other transactions. Additionally, some of the Management Committee representatives may currently perform duties for or with Energy Affiliates. SGT states that SGT interprets the information sharing restrictions in section 358.5 as prohibiting the joint owner representatives from receiving information necessary to protect their companies' ownership interests. SGT requests a temporary exemption to enable a designated representative of each joint venture owner to participate as a member of the Management Committee for each SGT Pipeline in which that representative's firm has ownership interests, and receive information necessary for the performance of management duties.

190. SGT states that Shell US Gas & Power LLC announced the sale of SGT on March 26, 2004, and the sale is expected to close by the end of 2004. SGT requests an exemption until 60 days after the sale of SGT or March 1, 2005, whichever comes first.

A. Public Notices, Interventions, and Comments

191. No interventions, protests or comments were filed.

B. Discussion

192. In Order No. 2004-B, the Commission generically addressed concerns about information sharing for jointly-owned Transmission Providers. *See* Order No. 2004-B at PP 122-126. Specifically, the Commission stated that employees of an Energy Affiliate owner of a jointly-owned Transmission Provider may receive non-public transmission information (subject to a no-conduit rule) that is necessary for corporate governance and investment management purposes as long as the employees who receive the transmission information do not engage in the activities listed in section 358.5(d)(1), (2), (3) or (4). *See Order No. 2004-B* at P 126. SGT does not describe the types of activities that the Management Committee members also perform for their respective Energy Affiliates. Within 30 days of the date of this order, SGT shall submit a compliance filing identifying the members of the Management Committee and describing, in detail, the other activities

they engage in for their respective Energy Affiliates. If the Management Committee representatives do not engage in Energy Affiliate-type activities listed in section 358.3(d)(1), (2), (3) or (4), an exemption is not required and those individuals may receive non-public transmission information subject to a no-conduit rule. If the Management Committee representatives do engage in Energy Affiliate-type activities listed in section 358.3(d)(1), (2), (3) or (4), SGT must also explain how SGT is functioning independently from its Energy Affiliates when the Management Committee representatives also participate in Energy Affiliate-type activities. Because the Commission is directing SGT to make a compliance filing, it will not enforce the information sharing requirements with respect to receipt of information by Management Committee representatives until 30 days from the date the Commission rules on SGT's compliance filing. In all other respects, SGT shall comply with the Standards of Conduct by September 22, 2004.

Shell Offshore Inc. and Shell Gulf of Mexico Inc. (Shell Offshore Producers) – Docket Number TS04-273-000

193. On July 23, 2004, Shell Offshore Producers requested a one year waiver [80] of the requirements of section 358.5(b)(8) of the Standards of Conduct regulations to permit the Shell Offshore Producers' personnel to communicate routine operating information received from personnel of an affiliated interstate pipeline. The Shell Offshore Producers state that the "no-conduit" prohibition in Order No. 2004-A prevents Shell Offshore Producers from engaging in the routine daily communications necessary to convey basic information relating to the Shell Offshore Producers' nominated and scheduled volumes internally and to affiliates to enable production to flow. The Shell Offshore Producers state that the communications at issue allow efficient and reliable operations and do not create an improper market advantage.

194. The Shell Offshore Producers are Energy Affiliates of Shell Gas Transmission LLC (SGT). SGT owns and operates several interstate pipelines located offshore in the Gulf of Mexico as well as several non-jurisdictional offshore gathering systems. SGT pipelines provide gathering and transportation service for the Shell Offshore Producers and other shippers. The Shell Offshore Producers ship most of their production on SGT pipelines, but they do not act as shippers for any other production. Shell Offshore Producers state that the Shell Offshore Producers operate the platforms from which the Shell Offshore Producers' production and other producers' gas is delivered into SGT pipelines, or into upstream gathering lines operated by SGT or the Shell Offshore Producers. In that capacity, the Shell Offshore Producers are the point operators responsible for coordinating the volumes that flow into SGT pipelines (including

[80] The request for waiver is for one year beginning September 1, 2004 to allow sufficient time for the sale of the Shell Gas Transmission LLC pipelines.

gathering lines) from receipt points at which one of the Shell Offshore Producers is the operator.

195. The Shell Offshore Producers state that the waiver will allow it to engage in a limited range of communications with SGT pipeline Energy Affiliates in the same manner as they would with regard to operational information received from a non-affiliated pipeline and communicated by Shell Offshore Producers' personnel to a non-affiliated entity. The Shell Offshore Producers state that the request is limited to twelve months to allow time for the sale of the SGT pipelines.

A. **Public Notice, Interventions, and Protests**

196. SGT filed comments in support of the request for partial waiver.

B. **Discussion**

197. The Commission will deny the Shell Offshore Producers' request for waiver of section 358.5(b)(8). A Transmission Provider is permitted to share information necessary to maintain the operations of the transmission system with its Energy Affiliate. In Order No. 2004-B, the Commission reiterated that information necessary to operate a transmission system on a day-to-day basis may be shared with an Energy Affiliate. However, the operational employees who receive transmission information may not share with other Energy Affiliate employees the transmission information the operational employees receive. [81] The clarification provided in Order No. 2000-B should allow the Shell Offshore Producers to receive information and operate the facilities in a reliable and efficient manner.

Southwest Gas Transmission Company (Southwest) – Docket No. TS04-222-000

198. Southwest requested for an exemption from the Standards of Conduct under Order No. 2004. Southwest states that it was not previously subject to the former Standards of Conduct under Part 161 of the Commission's regulations because it operates under a Part 157 certificate.[82]

199. Southwest is a small eight-mile, 20-inch diameter pipeline that transports gas from upstream interstate pipelines in Arizona to Southwest's retail local distribution system in Southern Nevada. Southwestern states that it is certificated to provide all of its firm

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[81] *See Order No. 2004-B* at P 114.

[82] *Southwest Gas Transmission Company, a Limited Partnership*, 91 FERC ¶ 61,007 (2000).

service to one customer, Southwest Gas Corporation, its affiliated LDC, under a cost of service contract. Furthermore, Southwest states that it has no employees, sales or marketing function, or Internet website.

200. Southwest argues that since it is a small pipeline designed to serve only one shipper as a conduit from upstream open access pipelines to the shipper's downstream retail system, Standard of Conduct obligations are unnecessary and unduly burdensome. Furthermore Southwest argues that its limited operations make any concerns over discrimination unrealistic. Southwest states that it is not permitted to discount its rate, consequently, the posting obligations are unnecessary.

A. Interventions, Protests, and Comments

201. No interventions, protests or comments were filed.

B. Discussion

202. The Commission denies Southwest's request for a full exemption from the Standards of Conduct. However, based on Southwest's statements concerning its small size, lack of staff and limited operations, the Commission is granting a partial exemption from the requirements of Order No. 2004. Specifically, the Commission is waiving the obligation to comply with the independent functioning requirement of section 358.4(a) and the information disclosure prohibitions of sections 358.5(a)(1) and (2) and (b)(1), (2) and (3) with respect to its affiliated LDC.

203. Regarding the posting requirements, Southwest has not explained why it could not obtain an Internet website or jointly post its Standard of Conduct information on the Internet website with an affiliated Transmission Provider.[83] Southwest is required to comply with the Standards of Conduct requirements that have not been waived by 30 days from the date of this order.

Texas Gas Transmission LLC (Texas Gas) – Docket No. TS04-253-000

204. Texas Gas is an interstate natural gas pipeline company engaged in the transportation of natural gas in interstate commerce through a natural gas transmission system extending from Texas and offshore Louisiana through Mississippi, Arkansas, Tennessee, Kentucky, Indiana, Illinois and Ohio. Texas Gas is a Transmission Provider as defined in Part 358. Loews Corporation (Loews), a holding company with diversified

[83] Paiute Pipeline Company, a FERC jurisdictional interstate pipeline, and Southwest are affiliated with Southwest Gas Corporation, which has an Internet website. Http://www.southwestgas.com/affiliates/index.html (September 3, 2004).

financial interests, is the parent of Texas Gas. As a holding company, Loews does not participate in energy or transmission markets and is not an Energy Affiliate as defined in Part 358.

205. Texas Gas seeks exemption from the Standards of Conduct because it has neither a marketing nor sales function, nor Energy Affiliates. Texas Gas states that it does not have a sales operating unit and does not provide unbundled sales service. Texas Gas contends that, since its acquisition by Loews, it does not have any Marketing Affiliates. According to Texas Gas, its parent, Loews, also does not participate in energy or transmission markets and is not an Energy Affiliate under the Standards of Conduct. While two Loews affiliates, Diamond Offshore Drilling Inc. and Hellespont Shipping Corporation, engage in domestic energy-related activities, neither one engages in any activities or transactions that make it an Energy Affiliate as defined in section 358.3(d).

206. Texas Gas notes that, in similar circumstances under the then-existing Part 161 Standards of Conduct, the Commission found that exemptions from the Standards of Conduct for companies that have no marketing affiliates were in the public interest.[84] According to Texas Gas, there is no public interest purpose served by requiring Texas Gas to comply with the Standards of Conduct where there is no potential for affiliate preference because neither an Energy Affiliate nor a sales or marketing function is present. Texas Gas, therefore, requests an exemption from the Standards of Conduct.

A. Interventions, Protests and Comments

207. PSEG Companies and the Process Gas Consumers Group filed motions to intervene with no protest or comments.

B. Discussion

208. The Commission is granting Texas Gas's request for an exemption from the Standards of Conduct. While Texas Gas is a Transmission Provider as defined in the Standards of Conduct, it does not have Energy or Marketing Affiliate or a sales or marketing function. In addition, neither its parent, Loews, nor the activities of two of Loews other affiliates, bring them within the definitions of an Energy Affiliate or a sales or marketing function.

Viking Gas Transmission Company (Viking) – Docket No. TS04-212

209. On February 9, 2004, Viking sought an exemption to allow the gas control department of an affiliate to provide it certain services. Viking is an interstate natural gas

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[84] *Citing Discovery Gas Transmission LLC*, 103 FERC ¶ 61,301 at 62,170 (2003).

pipeline company engaged in the transportation in interstate commerce of natural gas for others. Viking is owned by Northern Border Intermediate Limited Partnership (NBP).[85] Viking is operated by Northern Plains Natural Gas Company (Northern Plains) and does not have any of its own employees. In addition, Northern Plains also operates two affiliated Transmission Providers, MidWestern Gas Transmission Company and Northern Border Pipeline Company (*see* above discussions.)

210. Viking does not make commercial sales of gas. It does, however, make small operational purchases and sales of gas for the sole purpose of increasing or decreasing line pack levels to maintain the pipeline systems operational integrity.

211. Viking is seeking an exemption to allow the Gas Control department of Northern Plains to continue providing certain operations monitoring services for an Energy Affiliate of Viking. Viking claims that under the new Standards of Conduct, Bear Paw Energy, LLC (Bear Paw) and Crestone Ventures, LLC (Crestone) are Energy Affiliates of Viking. Both companies are owned by NBP. Bear Paw has natural gas gathering, processing and fractionation operations and gas gathering operations in Wyoming. Through these two companies, NBP owns interests in gas gathering facilities located in Wyoming. Crestone and its subsidiaries own approximately 300 miles of gathering facilities in Wyoming.[86] NBP, through Bear Paw and Crestone, owns interests in certain gas gathering facilities in Wyoming.

212. During normal business hours, Bear Paw and Crestone monitor their own gathering facilities. After hours and on the weekend Northern Plains provides gas control services for Bear Paw and Crestone. Northern Plains does the same for Viking on a 24-hour basis. This service costs Bear Paw and Crestone around $170,000 annually which Viking would otherwise have to pay. Viking claims that strict scrutiny has been employed to ensure that no information about Viking or its customers is accessible by Bear Paw or Crestone. Viking argues that allowing this limited exemption would ensure cost efficiency of the current system and that Viking's customers would benefit from the lower cost.

A. <u>Public Notice, Interventions and Protests</u>

213. No motions to intervene or protests were filed.

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[85] Northern Plains Natural Gas Company and Pan Border Gas Company are NBP's general partners which are both subsidiaries of Enron Corporation, and Northwest Border Pipeline Company, itself a subsidiary of TransCanada PipeLines Limited, is a subsidiary of TransCanada Corporation.

[86] Http://www.northernborderpartners.com/nngg-_cev.htm (September 6. 2004).

B. Discussion

214. In Order Nos. 2204-A at P 97 and 2004-B at P 29-32, the Commission clarified that gatherers and processors affiliated with interstate pipelines are not Energy Affiliates in certain circumstances. If a gatherer or processor merely provides a gathering or processing service and only purchases natural gas to supply operational needs, and does not engage in other Energy Affiliate related activities, then it is not an Energy Affiliate. It appears from Viking's filing that Bear Paw and Crestone engage in gathering functions, but it is not clear whether they engage in other Energy Affiliate related activities. Within 30 days of the date of this order, Viking shall explain whether Bear Paw and Crestone are Energy Affiliates, as that term is defined at section 358.3(d) of the Standards of Conduct. If Bear Paw and Crestone are Energy Affiliates, Viking must specifically articulate the roles and responsibilities of the shared monitoring personnel and describe the procedures it will implement to protect customers of Viking. Because the Commission is directing Viking to submit a compliance filing, the Commission will not enforce the separation of functions and information disclosure prohibitions with respect to these shared employees until 30 days after the day the Commission rules on Viking's compliance filing. Viking shall implement the remaining provisions of the Standards of Conduct by September 22, 2004.

Williston Basin Interstate Pipeline Company (Williston Basin) -- Docket No. TS04-260-000

215. On April 5, 2004, Williston Basin requested that the Commission exempt seven affiliates from the definition of Energy Affiliates under the Standards of Conduct. Williston Basin states that BIV Generation Company, LLC (BIV), Centennial Power, Inc. (Centennial Power), Colorado Power Partners (Colorado Power), Fidelity Oil Company (Fidelity Oil), Innovative Gas Services, Inc. (Innovative), Marcon Energy Corporation (Marcon), and New Avoca Gas Storage, LLC (New Avoca) all are non-operating companies with no employees that were either created for corporate governance reasons or are no longer conducting business. Consequently, Williston Basin argues that even though under Order No. 2004, these companies would be treated as Energy Affiliates; none of them will have the opportunity to grant undue preference or discriminate in the energy markets. For this reason, Williston Basin requests that the Commission grant a limited exemption, excluding these seven companies from the definition of Energy Affiliate as contained in section 358.3(d) (1), (2), (3), (4), and (5) of the Commission's regulations.

216. Williston Basin also requests a partial exemption from section 358.4(a) (1) of the Commission's regulations (the independent functioning requirement) for 51 positions that it states are shared with three of its Energy Affiliates: Bitter Creek Pipelines LLC (Bitter Creek), Fidelity Exploration and Production Company (Fidelity E&P), and the electric

division of Montana-Dakota Utilities Company (MDU).[87] Williston Basin states the shared employees include managers and supervisors of its Energy Affiliates' technical and engineering employees and non-supervisory technical and field personnel. The non-supervisory employees are shared to the extent they provide backup engineering, operation, repair and maintenance services to Bitter Creek and Fidelity E&P.

217. Williston Basin states that it shares the Director of Market Services and System Planning with Bitter Creek, Fidelity E&P, and MDU and that this position provides day-to-day management of the market services and system planning functions within Williston Basin as well as supervises the Gas Control and Measurement Accounting Manager, who in turn manages other shared employees. Additionally, Williston Basin states it shares communications and controls engineering department personnel with MDU.

218. Williston Basin asserts that its request should be granted since the shared positions are limited in the specialized services they provide, its tariff and the Standards of Conduct provide sufficient protections against discriminatory treatment, and they are necessary to prevent increased operating costs and decreased efficiency.

A. <u>Public Notices, Interventions, and Protests</u>

219. No comments, protests, or motions to intervene were filed.

B. <u>Discussion</u>

220. Williston Basin has not provided sufficient, specific information to determine whether good cause exists to exempt or grant waivers to BIV, Centennial Power, Colorado Power, Fidelity Oil, Innovative, Marcon, and New Avoca from the Energy Affiliates definition under the Standards of Conduct. Williston has not provided sufficient information as to each of the affiliates' activities, size and interest in its operations. It is unclear what each company does and how it fits within the corporate structure.

221. Additionally, the Commission denies Williston Basin's partial waiver of the independent functioning requirements for Fidelity E&P, and MDU. Although Williston provided some job descriptions for the 51 employees, it has not explained why these

[87] On September 10, 2004, Williston Basin made a supplemental filing explaining that Bitter Creek is not an Energy Affiliate since it merely provides gathering services, only purchases natural gas to supply its own operational needs and does not engage in any other Energy Affiliate activities. As a result, Williston Basin asks the Commission to revise its prior request to delete references to Bitter Creek.

employees must be shared. While some of these employees appear to be field or maintenance employees who may be shared with the Energy Affiliates (such as Technical Specialist I, II and III), others appear to be transmission function employees (Lead Gas Controller or Gas Control and Measurement Accounting Manager.) Williston Basin has failed to demonstrate good cause for waiving the independent functioning requirement.

222. The Commission directs Williston Basin to file, within 30 days of the date of this order, a compliance filing that indicates the activities, size and interest in the operation of each of the affiliates for which it seeks a waiver, and whether each affiliate has market-based-rate authority and where it fits in the organizational structure.

223. Regarding the positions for which it seeks exemption from the independent functioning requirements, Williston Basin shall indicate why the positions must be shared and how transmission and customer information will be protected if the employees are shared. The Commission will not enforce compliance of the independent functioning requirement with respect to the seven companies and 51 positions until 30 days after the Commission rules on Williston Basin's compliance filing. In all other respects, Williston Basin must comply with the Standards of Conduct by September 22, 2004.

The Commission orders:

(A) As discussed herein, the Commission denies Alcoa Power Generating Inc.'s request for waiver of the Standards of Conduct.

(B) As discussed herein, the Commission grants Cross Sound Cable Company, LLC's request for waiver of the Standards of Conduct.

(C) As discussed herein, the Commission grants Dauphin Island Gathering a partial waiver of section 358.4 and sections 358.5(a)(1), (2) and (b)(1), (2) and (3) of the Standards of Conduct. Dauphin Island must comply with all other Standards of Conduct by September 22, 2004.

(D) As discussed herein, the Commission grants Distrigas of Massachusetts LLC a waiver of section 358.4 and sections 358.5(a)(1), (2) and (b)(1), (2) and (3) of the Standards of Conduct. Distrigas must comply with all other Standards of Conduct by September 22, 2004.

(E) As discussed herein, the Commission will conditionally grant El Paso Corporation's request for Declaratory Order.

(F) As discussed herein, within 30 days of the date of this order, Granite State Gas Transmission, Inc. must submit a compliance filing.

(G) As discussed herein, the Commission is granting HIOS a 30-day limited waiver after the close of the merger to comply with certain Standards of Conduct requirements.

(H) As discussed herein, within 30 days of the date of this order, KM Pipelines must submit a compliance filing.

(I) As discussed herein, the Commission grants Lincoln Electric System's request for waiver of section 358.4 and sections 358.5(a)(1), (2) and (b)(1), (2) and (3) of the Standards of Conduct. Lincoln must comply with all other Standards of Conduct by September 22, 2004.

(J) As discussed herein, within 30 days of the date of this order, Midwestern Gas Transmission Co. shall submit a compliance filing.

(K) As discussed herein, within 30 days of the date of this order, National Fuel Gas Supply shall submit a compliance filing.

(L) As discussed herein, within 30 days of the date of this order, Northern Border Pipeline Co. shall submit a compliance filing.

(M) As discussed herein, within 30 days of the date of this order, NorthWestern shall submit a compliance filing with respect to its Montana operation. The Commission also affirms that NorthWestern's South Dakota operation is not required to comply with the Standards of Conduct under Order No. 2004.

(N) As discussed herein, within 30 days of the date of this order, OVEC and Indiana-Kentucky shall submit a compliance filing.

(O) As discussed herein, the Commission grants Panther Pipeline a waiver of section 358.4 and sections 358.5(a)(1), (2) and (b)(1), (2) and (3) of the Standards of Conduct. Panther must comply with all other Standards of Conduct by September 22, 2004.

(P) As discussed herein, the Commission is granting Petal Gas Storage a 30-day limited waiver after the close of the merger to comply with certain Standards of Conduct requirements.

(Q) As discussed herein, the Commission is denying PPL Electric Utilities' request for waiver.

(R) As discussed herein, the Commission denies the request of Questar Pipeline Company, Overthrust Pipeline Company and Questar Southern Trails Pipeline Company to exempt certain affiliates from the definition of Energy Affiliate, but clarifies that based on the pleading, it appears that these affiliates do not fall within the definition of Energy Affiliate.

(S) As discussed herein, the Commission denies the request of Saltville Storage, but clarifies that based on the pleading, it appears that its affiliate, Virginia Gas, does not fall within the definition of Energy Affiliate.

(T) As discussed herein, within 30 days of the date of this order, Shell Gas Transmission shall submit a compliance filing.

(U) As discussed herein, the Commission denies the request for waiver by Shell Offshore Producer because the Commission has addressed its concerns on a generic basis.

(V) As discussed herein, the Commission grants Southwest Gas Transmission a waiver of section 358.4 and sections 358.5(a)(1), (2) and (b)(1), (2) and (3) of the Standards of Conduct. Southwest must comply with all other Standards of Conduct by September 22, 2004.

(W) As discussed herein, the Commission grants Texas Gas's request for waiver.

(X) As discussed herein, within 30 days of the date of this order, Viking Gas Transmission shall submit a compliance filing.

(Y) As discussed herein, within 30 days of the date of this order, Williston Basin shall submit a compliance filing.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.